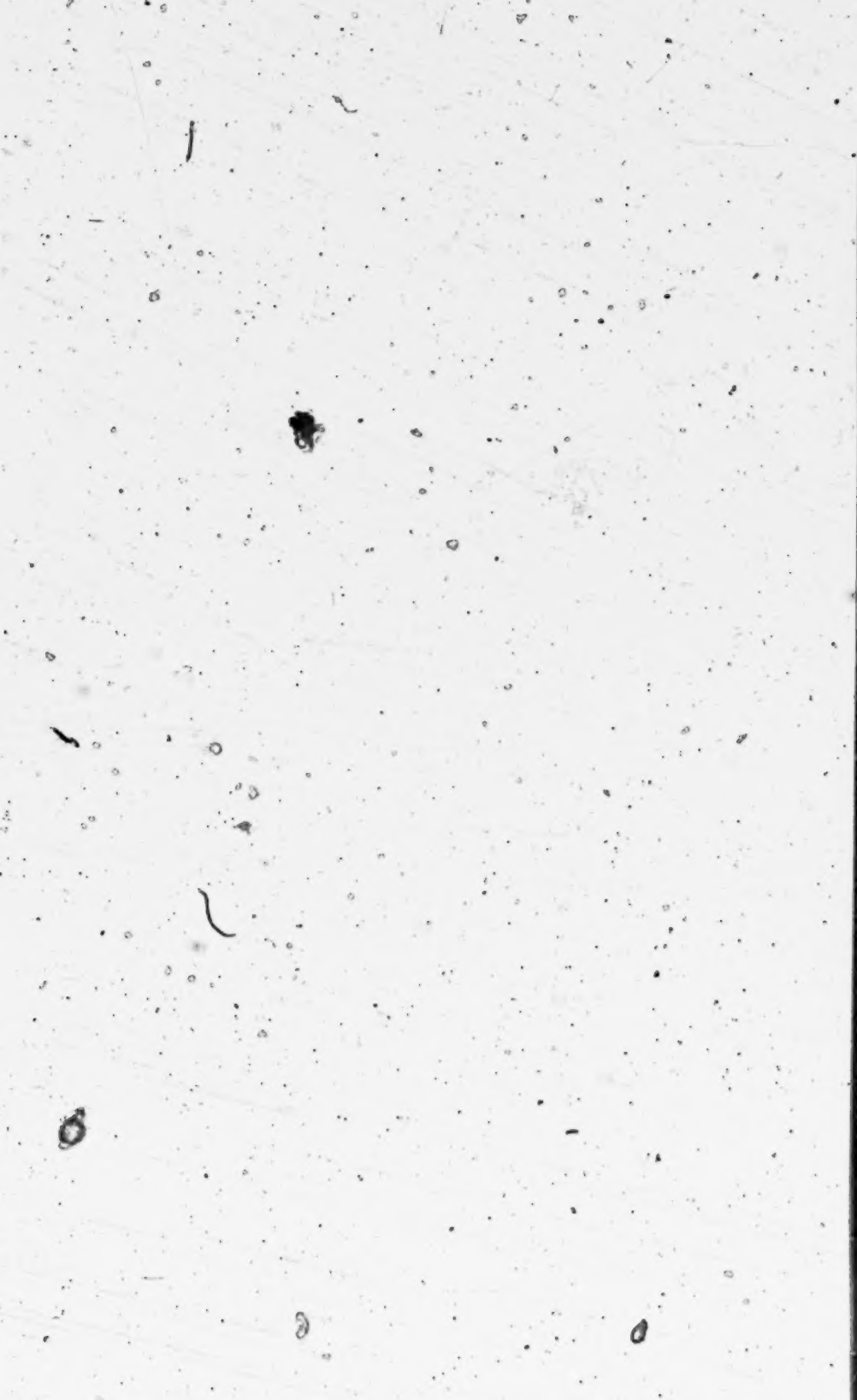

VOL. II

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 131

THE UNITED STATES OF AMERICA, PETITIONER

vs.

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, ET AL.

No. 132

LOCAL 807 OF INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, STABLEMEN AND HELPERS OF AMERICA, ET AL., PETITIONERS

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED JUNE 5, 1944
CERTIORARI GRANTED OCTOBER 13, 1944

INDEX

	PAGE
Statement Under Rule 13	1
Docket Entries (C-102-394)	7
Docket Entries (C-102-395)	26
Indictment (C-102-394)	41
Indictment (C-102-395)	54
Demurrer by Defendants Local 807, Devery, Hickey, Clarke et al. (C-102-394)	72
Amended Demurrer by Defendants Ackalitis et al.	74
Demurrer by Defendants La Rosa and Gaughan	76
Demurrer by Defendants Local 807, Devery, Hickey, Clarke et al. (C-102-395)	76a
Opinion by Leibell, D. J., Overruling Demurrers	77
Order Overruling Demurrer (C-102-394)	98
Order Overruling Demurrer (C-102-395)	99a
Notice of Motion by Defendants Local 807 et al. for Bill of Particulars	99b
Affidavit of Edward C. Maguire in Support of Motion	113
Notice of Motion by Defendants Ackalitis et al. for Bill of Particulars	116
Affidavit of James D. C. Murray in Support of Motion	126
Notice of Motion by Defendant Murtagh for Bill of Particulars	129
Affidavit of Michael Murtagh in Support of Motion	133
Stipulation that Motions for Bills of Particulars Apply to Both Indictments	136
Bill of Exceptions	139
Motion to Consolidate	149
Opening Statement for the Government by Mr. Cahill	167
Opening Statements for Defendants:	
By Mr. Maguire	178
By Mr. Murray	186
By Mr. Boudin	188

PAGE

Offers of Proof by Government.....716, 1406
Motion for Mistrial..... 1505
Motions to Dismiss and Argument.....1862-1910
Offer of Proof by Defense.....2224, 2278
Motion for Direction of Verdict for Defense.... 2296
Motions to Dismiss and Argument.....2297-2303
Summation by Mr. Murray..... 2304
Summation by Mr. Boudin..... 2333
Summation by Mr. Maguire..... 2353
Summation by Mr. Cahill..... 2368
Defendants' Requests to Charge with Notations by the Court..... 2411
Charge of the Court..... 2428
Exceptions to Charge and Refusals to Charge.. 2454
Communications from Jury and Charge of the Court.....2465, 2469, 2472
Verdict.....2484-2490
Motions to Set Aside Verdict.....2495-2517
Sentences.....2519-2531
Judge's Authentication of Bill of Exceptions..... 2594
Stipulation Settling Bill of Exceptions..... 2594
Order Settling Bill of Exceptions..... 2595

Judgment against Local 807 (C-102-394)..... 2596
Judgment against Local 807 (C-102-395)..... 2597
Judgment against William Campbell..... 2598
Commitment against William Campbell..... 2599
Judgment against Austin Furey..... 2600
Commitment against Austin Furey..... 2601
Judgment against George Bagley (C-102-394)..... 2602
Judgment against George Bagley (C-102-395)..... 2603
Commitment against George Bagley..... 2604
Judgment against Joseph Bender (C-102-394)..... 2605
Judgment against Joseph Bender (C-102-395)..... 2606
Commitment against Joseph Bender..... 2607
Judgment against Michael Cahill (C-102-394)..... 2608
Judgment against Michael Cahill (C-102-395)..... 2609

PAGE

Commitment against Michael Cahill..... 2610
Judgment against Joseph Deegan (C-102-394)..... 2611
Judgment against Joseph Deegan (C-102-395)..... 2612
Commitment against Joseph Deegan..... 2613
Judgment against Robert Dillon..... 2614
Commitment against Robert Dillon..... 2615
Judgment against Frank Downs (C-102-394)..... 2616
Judgment against Frank Downs (C-102-395)..... 2617
Commitment against Frank Downs..... 2618
Amended Judgment against Frank Downs (C-102-394)..... 2619
Amended Commitment against Frank Downs..... 2620
Judgment against John Gaughan (C-102-394)..... 2621
Judgment against John Gaughan (C-102-395)..... 2622
Commitment against John Gaughan..... 2623
Judgment against John Horan (C-102-394)..... 2624
Judgment against John Horan (C-102-395)..... 2625
Commitment against John Horan..... 2626
Judgment against Andy Jakakas (C-102-394)..... 2627
Judgment against Andy Jakakas (C-102-395)..... 2628
Commitment against Andy Jakakas..... 2629
Judgment against Abraham Klenofsky (C-102-394). 2630
Judgment against Abraham Klenofsky (C-102-395). 2631
Commitment against Abraham Klenofsky..... 2632
Judgment against Leonard La Marne (C-102-394).. 2633
Judgment against Leonard La Marne (C-102-395).. 2634
Commitment against Leonard La Marne..... 2635
Judgment against Manuel Magan..... 2636
Judgment against James Murphy (C-102-394)..... 2637
Judgment against James Murphy (C-102-395)..... 2638
Commitment against James Murphy..... 2639
Judgment against George Needelman..... 2640
Commitment against George Needelman..... 2641
Judgment against Bernard L. Randazzo (C-102-394) 2642
Judgment against Bernard L. Randazzo (C-102-395) 2643
Commitment against Bernard L. Randazzo..... 2644
Judgment against Samuel Reichler (C-102-394).... 2645

	PAGE
Judgment against Samuel Reichler (C-102-395)	2646
Commitment against Samuel Reichler	2647
Judgment against Morris Reichler	2648
Judgment against Harry Zollinger (C-102-394)	2649
Judgment against Harry Zollinger (C-102-395)	2650
Commitment against Harry Zollinger	2651
Judgment against Thomas Sharkey (C-102-394)	2652
Judgment against Thomas Sharkey (C-102-395)	2653
Commitment against Thomas Sharkey	2654
Judgment against William Simpson (C-102-394)	2655
Judgment against William Simpson (C-102-395)	2656
Commitment against William Simpson	2657
Judgment against Tony Venditti (C-102-394)	2658
Judgment against Tony Venditti (C-102-395)	2659
Commitment against Tony Venditti	2660
Judgment against Peter Waskiewicz	2661
Judgment against Edward Weinheimer	2662
Commitment against Edward Weinheimer	2663
Judgment against John Weinheimer (C-102-394)	2664
Judgment against John Weinheimer (C-102-395)	2665
Commitment against John Weinheimer	2666

Notice of Appeal by Defendant Local 807 of International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America	2667
Notice of Appeal by Individual Defendants except Michael Cahill	2673
Notice of Appeal by Defendant Michael Cahill	2686
Assignment of Errors	2694
Order Extending Time to File Record	2692
Order Extending Time to File Record	2693
Order Extending Time to File Record	2792
Order Extending Time to File Record	2794
Order Extending Time to File Record	2795
Order Extending Time to File Record	2796
Stipulation as to Record	2798
Order as to Record	2799
Clerk's Certificate	2800

PAGE
Proceedings in U. S. C. C. A. Second Circuit 2801
Opinion, L. Hand, C. J 2801
Concurring opinion, Clark, J 2807
Opinion, Augustus N. Hand, J., dissenting in part . 2809
Government's petition for rehearing 2810
Order denying petition for rehearing 2813
Judgment 2813
Clerk's certificate 2814
Orders allowing certiorari 2815

BILL OF EXCEPTIONS

Testimony

Before Hon. Murray Hulbert, *U. S. D. J.*, and a Jury

For the Government

	PAGE
Albert A. De Roches:	
Direct by Mr. Marks	193
Anna E. Chudy:	
Direct by Mr. Marks	204
Edward Deptula:	
Direct by Mr. Marks	229
George Willard Steller:	
Direct by Mr. Marks	233
Cross by Mr. Murray	241
Redirect by Mr. Marks	257
Recross by Mr. Murray	258
George Haversat:	
Direct by Mr. Marks	259
Cross by Mr. Murray	267
Henry Monar:	
Direct by Mr. Marks	281
Cross by Mr. Murray	292
Cross by Mr. Maguire	297
Redirect by Mr. Marks	300
Theodore Steller:	
Direct by Mr. Marks	307
Cross by Mr. Maguire	314
Benjamin Mattson:	
Direct by Mr. Marks	321
Cross by Mr. Murray	344
Redirect by Mr. Marks	363
Robert E. A. Boyle:	
Direct by Mr. Marks	366
Cross by Mr. Murray	372

PAGE

Edward A. Strozyk:
Direct by Mr. Marks..... 375
Cross by Mr. Murray..... 398
Cross by Mr. Maguire..... 412
Redirect by Mr. Marks..... 415
Paul Ellsworth Koontz:
Direct by Mr. Marks..... 419
Cross by Mr. Murray..... 449
Redirect by Mr. Marks..... 453
Roy Thomas Lescalleet:
Direct by Mr. Marks..... 454
Direct (resumed) by Mr. Ennis..... 475
Cross by Mr. Murray..... 479
Cross by Mr. Maguire..... 498
Redirect by Mr. Ennis..... 501
Richard E. Nolder:
Direct by Mr. Ennis..... 502
Cross by Mr. Murray..... 509
Redirect by Mr. Ennis..... 516
H. Earl Pitzer:
Direct by Mr. Ennis..... 517
Cross by Mr. Murray..... 548
Redirect by Mr. Ennis..... 569
Harry M. Wood:
Direct by Mr. Ennis..... 570
Cross by Mr. Murray..... 583
Francis David Dillman:
Direct by Mr. Marks..... 586
Cross by Mr. Maguire..... 598
Cross by Mr. Boudin..... 607
Redirect by Mr. Marks..... 611
Wilmer Fidler:
Direct by Mr. Marks..... 615
Cross by Mr. Murray..... 638

PAGE

Russell B. Goddard:
Direct by Mr. Ennis..... 649
Direct (continued) by Mr. Ennis..... 729
Cross by Mr. Murray..... 747
Redirect by Mr. Ennis..... 797
Recross by Mr. Murray..... 801
George Beatty:
Direct by Mr. Marks..... 802
Cross by Mr. Murray..... 846
Cross by Mr. Boudin..... 880
Cross by Mr. Murray..... 899
Redirect by Mr. Marks..... 899
Recross by Mr. Murray..... 902
Redirect by Mr. Marks..... 906
Robert B. Spackman:
Direct by Mr. Marks..... 906
Cross by Mr. Boudin..... 934
Frank Bernot:
Direct by Mr. Marks..... 938
Cross by Mr. Murray..... 964
Redirect by Mr. Marks..... 994
Charles R. Pritts:
Direct by Mr. Ennis..... 998
Direct by Mr. Ennis (continued)..... 1025
Hobart Portersfield:
Direct by Mr. Ennis..... 1035
Cassius C. Perry:
Direct by Mr. Ennis..... 1051
Cross by Mr. Murray..... 1071
Floyd E. Fronk:
Direct by Mr. Marks..... 1077
Cross by Mr. Murray..... 1085
Roy John Austin:
Direct by Mr. Marks..... 1089
Cross by Mr. Murray..... 1107

PAGE

Milton L. Lahn:
Direct by Mr. Ennis..... 1116
Cross by Mr. Murray..... 1134
Redirect by Mr. Ennis..... 1140
Recross by Mr. Murray..... 1149
Redirect by Mr. Ennis..... 1150
John W. Hughes:
Direct by Mr. Marks..... 1151
Cross by Mr. Murray..... 1158
William F. Betts:
Direct by Mr. Marks..... 1160
Cross by Mr. Murray..... 1181
Redirect by Mr. Marks..... 1186
Carlton C. Hooks:
Direct by Mr. Ennis..... 1198
Cross by Mr. Murray..... 1224
Cross by Mr. Murray (continued)..... 1545
Cross by Mr. Murray (continued)..... 1565
Howard A. Miner:
Direct by Mr. Marks..... 1238
Cross by Mr. Murray..... 1249
Lillian P. Miner:
Direct by Mr. Marks..... 1253
Cross by Mr. Murray..... 1257
Michael Agoes:
Direct by Mr. Marks..... 1262
Cross by Mr. Murray..... 1268
Joseph Buglio:
Direct by Mr. Marks..... 1275
Cross by Mr. Murray..... 1295
Cono Buglio:
Direct by Mr. Marks..... 1301
Cross by Mr. Murray..... 1314
Raymond E. Stiles:
Direct by Mr. Ennis..... 1317

PAGE

Albert A. Wilson:
Direct by Mr. Ennis..... 1328
Cross by Mr. Murray..... 1338
Julius E. Allred:
Direct by Mr. Ennis..... 1344
Cross by Mr. Murray..... 1352
Redirect by Mr. Ennis..... 1358
Paul M. Grapani:
Direct by Mr. Marks..... 1358
Cross by Mr. Maguire..... 1367
Alfred L. Hummel:
Direct by Mr. Marks..... 1370
Cross by Mr. Maguire..... 1380
Earl Fowser:
Direct by Mr. Ennis..... 1383
Recalled..... 1420
Clinton B. Newell:
Direct by Mr. Ennis..... 1390
Cross by Mr. Murray..... 1420
Edward Warren:
Direct by Mr. Marks..... 1401
Direct by Mr. Marks (continued)..... 1411
Cross by Mr. Murray..... 1419
John Palmer:
Direct by Mr. Marks..... 1421
Cross by Mr. Murray..... 1426
Max Snowhite:
Direct by Mr. Ennis..... 1429
Cross by Mr. Murray..... 1435
Redirect by Mr. Ennis..... 1439
Recross by Mr. Murray..... 1439
Theodore J. Williams:
Direct by Mr. Marks..... 1440
Cross by Mr. Murray..... 1447
Harry T. Trembley:
Direct by Mr. Marks..... 1447
Cross by Mr. Murray..... 1457

PAGE

Ronald G. Carman:
Direct by Mr. Ennis..... 1458
Cross by Mr. Murray..... 1461
Sheldon Carll:
Direct by Mr. Marks..... 1462
Cross by Mr. Murray..... 1470
John A. Zohlman:
Direct by Mr. Marks..... 1471
Cross by Mr. Murray..... 1477
Emily B. Libe:
Direct by Mr. Ennis..... 1479
Cross by Mr. Murray..... 1502
Cross by Mr. Murray (resumed)..... 1510
Vincent Robbins:
Direct by Mr. Marks..... 1551
William H. Harris 3d:
Direct by Mr. Marks..... 1566
Cross by Mr. Murray..... 1587
Redirect by Mr. Ennis..... 1605
Samuel T. Simpkins:
Direct by Mr. Ennis..... 1605
Cross by Mr. Murray..... 1613
Redirect by Mr. Ennis..... 1615
John Lester Finlaw:
Direct by Mr. Ennis..... 1617
Cross by Mr. Murray..... 1624
Raymond A. Byrnes:
Direct by Mr. Ennis..... 1631
Cross by Mr. Murray..... 1649
Cross by Mr. Murray (continued)..... 1780
Redirect by Mr. Ennis..... 1795
Frank Lo Biondo:
Direct by Mr. Ennis..... 1659
Cross by Mr. Murray..... 1665
George Henry Harbert:
Direct by Mr. Ennis..... 1666
Cross by Mr. Murray..... 1680

PAGE

Alfonso Brago:
Direct by Mr. Ennis..... 1686
Cross by Mr. Murray..... 1692
Carl Calkins:
Direct by Mr. Ennis..... 1693
Cross by Mr. Murray..... 1701
Redirect by Mr. Ennis..... 1702
John E. Kaufman:
Direct by Mr. Ennis..... 1704
Cross by Mr. Murray..... 1708
Earl Hudson:
Direct by Mr. Ennis..... 1709
Cross by Mr. Murray..... 1714
Donald Samuel Hunter:
Direct by Mr. Ennis..... 1715
Cross by Mr. Murray..... 1728
Redirect by Mr. Ennis..... 1732
Recross by Mr. Murray..... 1735
Walter Stanton:
Direct by Mr. Ennis..... 1737
Cross by Mr. Murray..... 1745
Louis Layman:
Direct by Mr. Ennis..... 1746
Cross by Mr. Murray..... 1750
Harry L. Owens:
Direct by Mr. Ennis..... 1752
Cross by Mr. Murray..... 1758
Salvatore Fontana:
Direct by Mr. Ennis..... 1760
Allen Zane:
Direct by Mr. Ennis..... 1768
Cross by Mr. Murray..... 1776
Ross Cavallo:
Direct by Mr. Ennis..... 1800
Cross by Mr. Murray..... 1816

PAGE

Walter L. Larkin:
Direct by Mr. Marks..... 1821
Direct by Mr. Marks (resumed)..... 1838
Recalled—Direct by Mr. Marks..... 2285
J. Stanley Seeman:
Direct by Mr. Marks..... 2286
Francis L. Whitmarsh:
Direct by Mr. Marks..... 2293
Arthur P. Williams:
Direct by Mr. Marks..... 2294
Thomas F. McCarthy:
Direct by Mr. Marks..... 2295

FOR THE DEFENDANTS

Joseph Deegan:
Direct by Mr. Murray..... 1918
Cross by Mr. Cahill..... 1927
Andy Jakakas:
Direct by Mr. Murray..... 1940
Cross by Mr. Cahill..... 1941
Redirect by Mr. Murray..... 1968
James A. Murphy:
Direct by Mr. Murray..... 1971
Cross by Mr. Cahill..... 1991
John Gaughan:
Direct by Mr. Murray..... 2003
Cross by Mr. Cahill..... 2006
Peter Paul Waskiewicz:
Direct by Mr. Murray..... 2013
Cross by Mr. Cahill..... 2021
Redirect by Mr. Murray..... 2032
Manuel Magan:
Direct by Mr. Murray..... 2033
Cross by Mr. Cahill..... 2048
Redirect by Mr. Murray..... 2062

PAGE

William Simpson:
Direct by Mr. Murray 2063
Cross by Mr. Cahill 2067
William Joseph Campbell:
Direct by Mr. Murray 2075
Cross by Mr. Cahill 2096
Redirect by Mr. Murray 2123
Samuel Reichler:
Direct by Mr. Murray 2125
Cross by Mr. Cahill 2133
Redirect by Mr. Murray 2144
William H. Harris 3d:
Direct by Mr. Maguire 2145
Cross by Mr. Marks 2146
Walter L. Larkin (recalled):
Direct by Mr. Murray 2151
Cross by Mr. Cahill 2156
John Flaherty:
Direct by Mr. Murray 2158
Cross by Mr. Cahill 2163
Morris Reichler:
Direct by Mr. Murray 2165
Cross by Mr. Cahill 2169
Frank Downs:
Direct by Mr. Murray 2171
Cross by Mr. Cahill 2173
Anthony Venditti:
Direct by Mr. Murray 2184
Cross by Mr. Cahill 2190
Redirect by Mr. Murray 2198
Recross by Mr. Cahill 2198
John Joseph Weinheimer:
Direct by Mr. Murray 2199
Cross by Mr. Cahill 2204

PAGE

Joseph George Needelmann:
Direct by Mr. Murray 2214
Cross by Mr. Cahill 2222
Cross by Mr. Cahill (continued) 2255
Jacob D. Schmehl:
Direct by Mr. Maguire 2273
Howard S. Klein:
Direct by Mr. Maguire 2281

GOVERNMENT'S EXHIBITS

	Admitted Folio	Printed Page
4—Agreement, dated May 14, 1937, between Eastern & Southern Transportation Co. and Truck Drivers and Chauffeurs Local Union 807	1149	2535
5-A—Check for $9.42, dated June 14, 1937, Eastern & Southern Transportation Co., Inc. to Cash	1187	2540
5-B—Check for $10.00, dated May 14, 1937, Eastern & Southern Transportation Co., Inc. to Cash	1187	2541
6-A—Check for $9.42, dated June 2, 1937, Eastern & Southern Transportation Co., Inc. to Thomas Sharkey	1189	2542
8—Letter, dated Oct. 26, 1937, signed by George Needelman	6666	2543
9—Agreement, dated Nov. 19, 1937, between H. Earl Pitzer and Local Union 807	1612	2544
12—Receipt for $9.42, signed by George Needelman	1909	2544
15—Agreement, dated Jan. 27, 1938, between B & B Transportation Co., Inc. and Local Union 807	2437	2545
16-A—Check for $40.00, dated Apr. 30, 1938, B & B Transportation Co. to Michael Cahill	2517	2546

	Admitted Folio	Printed Page
16-B—Check for $40.00, dated May 7, 1938, B & B Transportation Co., Inc. to Michael Cahili	2517	2547
18—Telegram, dated May 6, 1938, B & B Transportation Co., Inc. to Local Union 807	2702	2548
19—Slip of Paper given by Spackman to Murray with telephone numbers	2762	2548
24—Receipt for $9.42, signed by J. W. Murray	2879	2549
25—Receipt for $9.42, signed by J. W. Murray	2879	2549
26—Receipt for $9.42, signed by G. Maggio.	2883	2549
27—Receipt for $9.42, signed by G. Maggio.	2883	2549
28—Receipt for $9.42, signed by Joe Kelly.	2890	2549
29—Receipt for $9.42, signed by Joe Kelly.	2890	2550
30—Receipt for $9.42, signed by Joe Kelly.	2890	2550
32—Agreement, dated Apr. 19, 1937, between Lahn Motor Transportation Co. and Local Union 807	3374	2550
33—Check, dated May 8, 1937, Milton L. Lahn to Tom Sharkey	3398	2551
34—Check, dated Sept. 14, 1937, Milton L. Lahn to Edward Weinheimer	3421	2552
35—Western Union Receipt, Apr. 27, 1937, from M. Lahn for Wm. Pelker for $18.84	3424	2554
37—Paper addressed to Ralph Reed given to William Betts	3541	2554
38—Agreement, dated Sept. 1, 1936, Reliable Motor Lines, Inc. with Local Union 807	3737	2554
41—Agreement, dated Mar. 16, 1937, Buglio Trucking Co. with Local Union 807.	3858	2555
46—Agreement, dated June 9, 1937, R. E. Stiles Motor Freight with Local Union 807	3977	2556

	Admitted Folio	Printed Page
48—Agreement, dated Apr. 14, 1937, Palmer Trucking Co. with Local Union 807.	4274	2557
49—Check, dated Nov. 30, 1937, of Snowhite & Gerson for Union Man.....	4297	2558
51—Agreement, dated June 8, 1937, between John Zohlman and Local Union No. 807.....	4429	2559
52—Agreement, dated May 12, 1937, between E. B. Libe and Local Union 807.....	4480	2560
53—Agreement, dated May 4, 1937, between Salem Express and Local Union 807.....	4718	2561
55—Agreement, dated May 19, 1937, between R. A. Byrnes, Inc. and Local Union 807.....	4919	2562
56—Check, dated July 7, 1937, R. A. Byrnes, Inc. to Robert Dillon.....	4933	2563
57—Agreement, dated May 22, 1937, between Lo Biondo Bros. Motor Express, Inc. and Local Union 807....	4993	2564
60—Check, dated Oct. 2, 1937, Donald S. Hunter to Manuel Magan.....	5168	2564
61—Receipt for $9.42 signed by Peter Waskiewicz.....	6065	2565
64-A—Contract, dated May 24, 1935, between South Jersey Chauffeurs, Teamsters and Helpers Local Union 590 and R. A. Byrnes, Inc.....	5388	2565
68—Constitution and By-Laws of International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America.....	5534	2568
69—Constitution and By-Laws of Truck Drivers Local 807, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America.....	5568	2569

	Admitted Folio	Printed Page
70—Agreement, dated Nov. 27, 1936, between Cooper-Jarrett, Inc. and Local Union 807	5877	2570
71—Receipt for $9.33 signed by Manuel Magan	6155	2570
78—Receipt for $9.42 signed by T. Venditti	6580	2571
81—Letter, dated Dec. 5, 1938, G. Needelman to Earl Pitzer	6782	2571
83-B—Letter, undated, G. Needelman to Earl Pitzer	6791	2572
85—Letter, undated, to Pitzer	6801	2572
DEFENDANTS' EXHIBITS		
A for Iden.—Apparently dishonored Check of Eastern & Southern Transportation Co., Inc.	1228	2572
B for Iden.—Telegram, dated June 20, 1938, C. E. Perry to Frank Dillman	1814	2573
C—Telegram, dated Oct. 18, 1937, Goddard for Holland Transportation Co. to Weinheimer	2245	2573
D—Agreement, dated Apr. 1, 1937, Brookline Trucking Co. with Local Union 807	2272	2574
E—Letter, dated May 11, 1938, Eastern States Transportation Co. to J. W. Murray	2810	2575
F—Telegram, dated May 13, 1938, B & B Transportation Co. to Local Union 807	2687	2576
G—Telegram, dated May 6, 1938, B & B Transportation Co., Inc. to Michael Cahill	2706	2576

	Admitted Folio	Printed Page
H for Iden.—Telegram, dated May 13, 1938, B & B Transportation Co., Inc. to Michael Cahill	2708	2577
I—Seven Pick-up Orders for Merchandise to Trucks of Eastern States Transportation Co.	2905	2577
J—Agreement, dated May 9, 1938, Perry's Express, Inc. with Local Union 807.	3323	2585
K—Official Dues Card of International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, Truck Drivers Local Union 807	3340	2586
L—Telegram, dated Apr. 30, 1937, Lahn to Thomas Sharkey	3406	2587
M—Telegram, dated May 5, 1937, Lahn to Thomas Sharkey	3410	2587
N—Telegram, dated May 4, 1937, Lahn to Thomas Sharkey	3410	2587
O—Telegram, dated May 3, 1937, Lahn to Thomas Sharkey	3410	2588
P—Telegram, dated May 2, 1937, Lahn to Thomas Sharkey	3410	2588
Q—Check, dated Mar. 5, 1937, Reliable Motor Lines, Inc. to J. Deegan	3782	2589
R—Photograph of Zollinger	3926	2590
S—Contract, dated July 3, 1937, between R. A. Byrnes and South Jersey Chauffeurs, Teamsters and Helpers Union, Local 590 of Vineland, N. J., and Vicinity	5344	2597

RUSSELL B. GODDARD, residing at 4463 Washington Street, Roslindale, Massachusetts, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. Mr. Goddard, what is your occupation? A. Traffic manager.

Q. By whom are you employed? A. Holland Transportation Company.

Q. Since when have you been employed by that company? A. February, 1939.

1946

Q. Before that by whom were you employed? A. Boston & New York Transportation.

Q. In what capacity? A. Traffic manager.

Q. How long were you employed there? A. A little over a year.

Q. From when? A. A little over a year. May, 1938.

Mr. Maguire: May I have the name of the company?

The Witness: Boston & New York Transportation Company.

Q. Before that by whom were you employed? A. Brookline Trucking Company.

Q. What capacity? A. Traffic manager.

1947

Q. From what time? A. September, 1937, to April, 1938—June, 1937, to April, 1938.

Q. Did you work in New York for the company? A. Yes, sir.

Q. Beginning of what time? A. September, 1937.

Mr. Maguire: May I ask the witness to keep his voice up.

The Court: Yes, keep your voice up.

Q. Beginning in September of 1937 how long were you employed in New York for the Brookline Trucking Company? A. From September to April.

Q. Of 1938? A. That is correct.

Q. In September of 1937 did one Edward Weinheimer speak to you about working for your employer? A. Yes, sir.

Q. Will you stand and see if that person is in this court room? A. In the front row next to the gentleman with the book (indicating).

The Court: Call the name.

The Witness: Edward Weinheimer.

1949 The Clerk: Edward Weinheimer.

(A man stood up.)

Mr. Ennis: May the record show that the person identified answered to the name?

The Court: Yes.

Q. What did Edward Weinheimer say to you on that first occasion?

The Court: When?

Mr. Ennis: September of 1937.

A. He said that he had been sent for by Mr. Lovell, the owner of Brookline Trucking Company, and he was going to work.

1950 Q. Did you speak to him about his qualifications? A. Yes, sir.

Q. What did you say to him? A. I interviewed him and asked him various questions about his past experience, asked to see his union book, asked to see his driver's license, and he said that he would go to work at $42 a week and no overtime. He stated that he realized that the over-the-road trucking company could not pay a ridiculous scale of wages to say nothing of overtime.

Q. Did he show you his union book? A. Yes, sir.

Q. What did he say about that? A. He said his union book was $14 in arrears which necessitated him getting the $14 so he could get his book paid up; then he could qualify for his job.

Q. What did you say to him about that? A. I gave it much thought and I sent him to my employer's brother, Herbert Lovell, in the R. C. Williams Building, and that was all I saw of Weinheimer until he returned.

Q. Did he return the same day? A. Yes, sir.

Q. What did he say to you? A. He said that he had talked to Herb. Herb had paid the money for his union book and it was all right for him to go to work. 1952

Q. Did you put him to work? A. Yes, sir.

Q. At that time in September, 1937, upon what run was the Brookline Trucking Company engaged in hauling merchandise? A. Boston and New England on the one hand and New York and New Jersey on the other.

Q. From Boston to New York? A. Yes.

Q. And from New York to New Jersey? A. Yes.

Q. How many trucks did Brookline own and operate at that time? A. At that time I believe they owned four.

Q. Did you utilize other trucks at that time? A. On many occasions.

Q. In these trips from New York to Boston and to Jersey? A. Yes, sir.

Q. Where did you get these trucks? A. We hired them from other companies that ran into the same territory as we did invariably. On other occasions we would hire trucks, that had come in from the West, unloaded and were ready to go to Boston to reload for the West again. 1953

Q. Did you hire any of those trucks from the New York trucking companies? A. I hired them from companies that had offices in New York.

Q. Yes. A. Yes, sir.

Q. When you rented such trucks did you supply the men for them, the drivers, or were they supplied as part of the rental? A. In the hiring of extra equipment, generally speaking, the price of the chauffeur was taken into consideration with the sum total you agreed to pay for a truck carrying a certain amount of tonnage from New York to Boston or vicinity or New England.

Q. And the driver or chauffeur would come with the truck? A. Yes, sir.

Q. At this time on your own trucks did you employ 807 men? A. Yes, sir.

Q. Were the drivers of the trucks you rented from com-
1955 panies having New York offices members of Local 807? A. On many occasions.

Q. Now turning your attention to the occasion upon which Edward Weinheimer went to work for your company, who was shop steward at that time? A. Henry Freeman.

Q. Did Henry Freeman continue to work for you after Edward Weinheimer was employed by you? A. No, sir.

Q. Did he leave your employ? A. Yes, sir.

Q. At what time with relation to the time Weinheimer came to work? A. I believe he quit just at about the time that Weinheimer came to work.

Q. Well, did he quit before or after or at the same time, do you know? A. Before.

1956 Q. What are the duties of a shop steward, as you understand the industry? A. To see that union conditions are maintained on a job, that the men are given conditions that are written into the contract, and represent them as their speaker, and negotiate for them with the delegate in the event of any union difficulties upon a job.

The Court: Who appoints the shop steward?

The Witness: The men.

Q. Do your recall what pay you were paying the men at that time? A. Previous to Weinheimer's employment?

Q. Yes, just at the time he came on the job. A. I think they were getting $37.50, if my memory serves me.

Q. Now, when Weinheimer came on the job, about the same time, the shop steward who had been shop steward left? A. Yes.

Q. Who was then elected shop steward? A. Ed Weinheimer.

Q. Did any other of your employees, 807 men, leave at the time Weinheimer came on the job? A. Yes, sir.

Q. Who were they? A. Tice and Freeman and McGowan. 1958

Q. What was the third name? A. McGowan.

Q. Did you or your employer choose their substitutes or their successors?

Mr. Maguire: I object to this as immaterial.
The Court: Sustained.

Q. Did you have any discussion with Ed Weinheimer as to who should succeed the men who left when he came on the job?

Mr. Maguire: Objected to as immaterial.
The Court: Overruled.
Mr. Maguire: Exception.
The Court: Yes or no. 1959

Q. Will you answer the question? Did you have any conversation? Just yes or no. A. Yes.

Q. What did you say?

Mr. Maguire: Objected to.
The Court: Well, where and when did the conversation take place?
The Witness: In the office.

Q. In your office? A. Yes, sir.

Q. At what time?

The Court: How long after Weinheimer became shop steward, or had he become shop steward?

The Witness: I would say within a couple of weeks after he was there.

Q. You had the conversation with him? A. Yes.

Q. What did he say about the successors for these men who left?

1961 Mr. Maguire: Objected to.

The Court: Overruled.

Mr. Maguire: Exception.

A. He said that he would supply any additional men that were needed on a job.

Q. What did you say to him? A. I said I thought that I had the right to pick my own men.

Q. What did he say to that? A. He said that he would pick the men, and that is all there was to it.

Q. After that conversation did you get substitute drivers in place of those who had left? A. Yes, sir.

Q. Did you pick the men? A. I agreed to the men.

Q. Who picked them? A. Weinheimer brought them.

Q. Did you have any conversation with Weinheimer
1962 when he brought these men as to their union affiliation? A. Yes, sir.

Q. What did you say? A. I asked him if they were qualified members of 807.

Q. And what did he say? A. They were.

Q. He said they were? A. Yes, sir.

Q. Did you see their union books? A. Yes, sir.

Q. Of these other men? A. A man.

Q. A man? A. Yes, sir.

Q. Who was that man? A. Joe Gillan.

Q. Did you at that time discuss with Weinheimer employing any men in addition to Gillan for the three men, I understood you to testify, who left? Were additional drivers discussed? A. Yes, sir.

Q. What was said about them between you and Weinheimer?

Mr. Boudin: Objected to.

The Court: Overruled.

Mr. Boudin: Exception.

The Witness: Question again, please?

The Court: Read it. 1964

Q. (Read) (Continued) Do you understand it? A. Yes. It is the same story, that if there were any more additional men to be hired, he would hire them.

Q. Were there additional men hired? A. Occasionally.

Q. About this time that Weinheimer came into your employ, say within a month, up to the end of October, were any additional men hired? A. Yes; I believe at about that time his brother came to work there.

Q. His brother? A. Yes.

Q. What was his name? A. I don't remember; his first name I don't remember.

Q. But it was one of Edward Weinheimer's brothers? A. Yes, sir, that is right.

Q. Did you have any discussion with Edward Weinheimer about his labor affiliation? 1965

The Court: Now, one moment before we leave that subject. Is the brother here?

The Witness: No, sir.

The Court: You do not see him here?

The Witness: Not this particular brother, no, sir.

1966

The Court: All right. That is all I want to know.

Q. Did you have any discussion with Edward Weinheimer about his brother's union status?

Mr. Boudin: Objected to.
The Court: Overruled.
Mr. Boudin: Exception.

Q. Will you answer the question? A. He had no union status.

1967

Mr. Boudin: One moment. I move to strike it out. I understood the question to call for yes or no.

The Court: Yes, strike it out. Read the question.

(Question read.)

Q. Just yes or no. A. Yes.

Q. What did you say to Ed Weinheimer about that?

Mr. Boudin: That is objected to.
The Court: Well, what was the conversation?

Q. What was the conversation?

1968

The Court: You can have your objection to that if you like.

Mr. Boudin: Same objection.
The Court: Overruled.
Mr. Boudin: Exception.

A. Well, we discussed whether he belonged to the union or not. Ed told me he did not, but he needed a helper on the truck to watch things and so forth and so on, and he said that his brother was going to go to work.

Q. And what did you say? A. Well, at that particular time I am almost certain that Mr. Lovell, the owner of the business, took it from there and some arrangements were made that I just don't remember.

Q. Did the brother work for you? A. Yes.

Q. Did Ed Weinheimer at any other time while you were working for Brookline in New York between September, 1937, and the following April or May, supply to your company any non-union drivers?

Mr. Boudin: That is objected to.

The Court: Sustained.

1970

Q. Did you have any other conversations during your New York employment with Brookline, any other conversations with Ed Weinheimer about supplying additional drivers for your trucks?

Mr. Boudin: Objected to.

The Court: Overruled.

Mr. Boudin: Exception.

The Court: Yes or no.

A. Yes.

The Court: When?

The Witness: At a time that we needed a road driver.

1971

Q. What was that conversation?

Mr. Boudin: Objected to.

Mr. Murray: I will object to that.

The Court: Well, you will have to fix a date. I want to know whether it was after the indictment was filed.

Mr. Ennis: If the Court please, my question was, during the period that he worked in New York for Brookline——

The Court: I heard all that.

Q. Perhaps, Mr. Goddard, you could fix as definitely as you can the time of that conversation? A. No, I don't think I can.

By the Court.

Q. Well, was it before April, 1938? A. Yes, sir.

Q. How long was it after the defendant Weinheimer
1973 came to work for the Brookline Company? A. I would say three months.

By Mr. Ennis.

Q. What was that conversation?

Mr. Boudin: Objected to.

The Court: I will allow it.

Mr. Boudin: Exception.

A. We got a road driver——

Q. Mr. Goddard, will you just state what you said to Ed. Weinheimer and what he said to you, if you recall the conversation? A. That is going to be kind of hard,
1974 because there were events leading up to it.

Q. Well, can you give us the substance of that conversation? A. Yes. It became known to him that——

The Court: No, not what it became known to him. You are telling us now what was in his mind. You said you wanted a road driver?

The Witness: Yes, sir.

By the Court.

Q. Well, did anybody come to your place of business? A. He brought a fellow.

Q. What was the name of the man he brought? A. I don't know his name. We knew him by "Yellow", that's all.

Q. Well, did you have any conversation with Edward Weinheimer when he brought the man? A. Weinheimer said, "This is the man that is going to drive the New Haven truck."

By Mr. Ennis. 1976

Q. What else did he say? A. He said he needed a job; he had just got out of jail and he wanted to help him.

Q. What did you say? A. That was another case of where Mr. Lovell——

Q. What did you say to him? A. I referred him to Mr. Lovell.

Q. With respect to Lovell's employment, did you discuss with Ed. Weinheimer his union status?

Mr. Boudin: Objected to.
The Court: Sustained.

Q. Did you talk to Ed. Weinheimer about whether or not Yellow was a member of Local 807? 1977

Mr. Boudin: Objected to.
The Court: He may answer yes or no.

A. Yes.

Q. What was that conversation?

Mr. Boudin: Objected to.
The Court: Overruled.
Mr. Boudin: Exception.

A. I asked him if this fellow Yellow could qualify as a union member in accordance with our contract, and he said, "No, but it won't make any difference."

Mr. Boudin: I move to strike out that answer, if your Honor please.

The Court: Denied.

Mr. Boudin: Exception.

Q. Did Yellow then go to work? A. Yes, sir.

Q. You testified that when Ed. Weinheimer was employed you discussed with him his pay of $42 a week and no overtime. A. Yes, sir.

1979

Q. At the end of his first week did you have any discussion with him about his wages? A. Yes, sir.

Q. What was that conversation?

Mr. Boudin: Objected to.

The Court: What is the materiality of that?

Mr. Ennis: If the Court please, I am trying to bring out through the witness' testimony the statements that the defendant made about the payments he required from his company.

Mr. Boudin: That would be immaterial, if your Honor please.

Mr. Ennis: If the Court please, it seems to me the whole substance of the case is the manner in

1980

which payments were sought and obtained from these companies.

Mr. Boudin: Not unless there was a conspiracy.

The Court: Well, he says he had a conversation with Weinheimer and agreed to pay him $42.50 a week and no overtime. Now, what is there beyond that?

Mr. Ennis: Well, there is a great deal.

The Court: Well, what is the materiality of it? That is what I am trying to get at.

Mr. Ennis: Well, the materiality is, your Honor, that Weinheimer—it is hard for me to tell you without bringing out the testimony—that additional moneys were sought and obtained——

The Court: At that time?

Mr. Ennis: At that time.

The Court: When the $42.50 was agreed upon?

Mr. Ennis: Yes, at the end of the first week, at the first payday, and I wanted to bring that out, if I might, your Honor.

The Court: Well, put your question and let us see what it is. 1982

Mr. Boudin: If your Honor please, I do not see how a breach by Weinheimer of his agreement as to wages would either tend to prove any conspiracy or would be material even if a conspiracy had been proved. Surely that was not part of the conspiracy and could not have been in furtherance of it. There is no such conspiracy charged in the indictment, as I understand it.

The Court: I will allow it.

Mr. Boudin: Exception.

Q. What was that conversation, Mr. Goddard? A. The conversation was that he wanted, as he said, every God damned dime that was coming to him and every man on the job. 1983

Q. What did you pay him? A. After a three-hour discussion, $56.50, and overtime. I think his first week's pay, if memory serves me right, was $76-and-some-cents.

Q. You testified, Mr. Goddard, that your company rented some trucks with 807 drivers already supplied to carry your merchandise from New York to Boston and

return. Now, did you have any discussion with Ed. Weinheimer about the driving of those trucks? A. Yes, sir.

Q. What was the substance of that conversation?

Mr. Boudin: Objected to.
The Court: Allowed.
Mr. Boudin: Exception.

A. I said to Weinheimer that the equipment belonging to Brookline Trucking Company had been exhausted; there was further needs for extra equipment, and I had hired extra equipment from companies that had an 807 contract, and that the contract specifically stipulated
1985 that in the event of hiring extra and added equipment—

Mr. Boudin: One moment. I would like to understand if that is a recital of what is in the contract or part of a conversation.
The Court: Is this what you said to him?
The Witness: Yes.
The Court: Proceed.

A. (Continued) They shall be manned, obtained by people who had contracts with 807, 816 or 282; that one man to a truck was sufficient.

The Court: Was that 282 or 202?
The Witness: 282.
1986

Q. What did Weinheimer reply? A. He said it didn't make a God damn bit of difference if ten men came with the truck; he and his men were going to go to work.

Q. After that, in addition to the men who came with the truck, did you put a man on such trucks supplied by Ed. Weinheimer? A. Yes, sir.

Q. And did you pay that man? A. Yes, sir.

Q. Mr. Goddard, did you have occasions during this period between September, 1937, and April of 1938, to discuss with Ed. Weinheimer his work for you? A. Many times.

Q. Did you discuss the manner in which he did his work? A. Yes, sir.

Q. Can you tell us the occasion of one such conversation?

Mr. Boudin: Objected to, the form of the question.

The Court: Overruled. He may answer yes or no.

Mr. Boudin: Exception. 1988

A. Yes.

Q. Will you tell the Court and jury as well as you remember the time when you had such a conversation?

Mr. Maguire: Objected to.

The Court: Overruled.

Mr. Maguire: Exception.

A. Well, I had talked to Weinheimer——

The Court: No. He only wants the time, nothing else; the time of any such occasion.

The Witness: Yes, there was one occasion. 1989

By the Court.

Q. When was it? A. On Pier 88.

Q. What date? A. Pier 88, North River. I don't know the date, your Honor.

Q. Approximately? A. Oh, I would say some time in December.

Q. Of what year? A. 1937.

Q. That is up at 48th Street? A. That is correct, sir—no——

By Mr. Ennis.

Q. What was that conversation?

Mr. Boudin: Objected to.

The Court: One moment.

The Witness: Yes, 48th Street, I beg your pardon.

Q. What was that conversation?

1991

Mr. Boudin: That is objected to.

The Court: Overruled.

Mr. Boudin: Exception.

A. The conversation was for the mishandling of freight.

Mr. Maguire: I move that that be stricken out.

The Court: Strike it out.

Q. Will you just state what you said to Ed. Weinheimer and what he said? A. I asked him to be more careful in the way he handled the merchandise that we were responsible for, even while he was unloading it and had got a clear receipt from the dock boss.

1992 Q. Do you know what the merchandise was on that occasion? A. Yes; I believe they were either parts for oil pumps that were going to South America or watch parts. I am not sure.

The Court: Parts for oil pumps or what?

The Witness: Watch parts.

Q. What did Ed. Weinheimer say?

Mr. Murray: I object, if your Honor please. It is a matter outside the issues of this indictment.

The Court: I will allow it.

Mr. Murray: Exception.

Q. What did Ed. Weinheimer say? A. He told me to mind my own business and he would do as he God damned pleases with the freight.

Q. Was there anyone else present at that conversation? A. Mr. Lovell.

Q. Who is Mr. Lovell? A. The owner of Brookline Trucking Company. 1994

Q. What was that conversation?

Mr. Boudin: Objected to.

Mr. Murray: Same objection, if your Honor please.

The Court: Overruled.

Mr. Boudin: Exception.

Q. What was that conversation? A. He told Mr. Lovell to mind his own business and leave the freight alone.

Q. What did Lovell say? A. He said that he merely was trying to show him how he wanted the merchandise placed on these flat trucks and how he thought in his own mind it should be handled.

Q. What did Lovell and Weinheimer do with respect to that merchandise? Describe what happened? 1995

Mr. Boudin: That is objected to.

The Court: Overruled.

Mr. Boudin: Exception.

A. Mr. Lovell was trying to point out to Weinheimer——

The Court: No, strike that out. Repeat the question.

(Question read.)

The Court: That question does not ask you to tell what was in Mr. Lovell's mind except insofar as it was demonstrated by what you physically saw him do.

The Witness: I was explaining the demonstration, your Honor.

The Court: But you are telling us what Lovell had in his mind that he was trying to do.

The Witness: I am sorry.

1997 Q. Describe the acts that Lovell and Weinheimer did. A. Lovell was arranging these cases on a flat truck that had been put there by the dock men and Weinheimer had told him several times to leave the freight alone. Lovell refused to do so, and Weinheimer grabbed him, pushed him to one side and hit him.

Q. Where did he hit him? A. On the shoulder.

Q. With what? A. With his hand.

Q. With his open or closed hand? A. I don't think his hand was closed.

Q. With his open hand? A. Yes.

Q. Then what happened? A. I separated them and we finished unloading the freight and went back to the terminal.

1998 Q. Did you yourself and Ed. Weinheimer at the Brookline place of business have any other talks about his work?

The Court: Yes or no.

A. Yes.

Q. Did you have such a talk during this period, between September, 1937 and April or May of 1938? A. Yes.

Q. Can you remember any such conversation?

By the Court.

Q. Well, can you fix the conversation any more definitely? A. No, sir, I can't.

Q. Where was the office of the Brookline Transportation Company at that time? A. At the beginning of Weinheimer's employment it was at 157 Tenth Avenue.

Q. Where was it at the time of this conversation you have just mentioned? A. I would not know that definitely, your Honor.

Q. Well, where was it at the time Weinheimer went to work there? A. 157 Tenth Avenue.

Q. Where did they move to from there? A. West 20th, around the corner. 2000

By Mr. Ennis.

Q. When? A. I think we moved February, 1938.

Q. February of 1938? A. Yes.

Q. Well, do you recall having such a conversation before you moved, in your former place of business? A. I can't place it.

The Court: Was there anyone present?

The Witness: Not that I recall, no, sir.

Q. Did you have a conversation in which Ed. Weinheimer talked about your comments on the way he did his work? 2001

Mr. Murray: I object.

The Court: I will allow him to say yes or no.

A. Yes.

Q. Well, can you tell us with any definiteness within this period of employment such conversation? A. I remember my conversation distinctly, but the time and the place that it happened—it is not clear to me.

Q. But you do remember that it was during this period from September, 1937, to the following April? A. Yes, sir.

By the Court.

Q. Well, was this conversation to which your attention has now been directed before or after the episode that you have referred to at Pier 88? A. Before and after, both.

By Mr. Ennis.

Q. Well, do you remember such a conversation before
2003 the episode at the pier? A. Yes, I do.

Q. And when was the episode at the pier? A. I think it was some time in February.

Q. The episode at the pier? A. I think so.

Q. And this would be before that? A. Yes.

Q. Will you give that conversation? A. I remember saying to Weinheimer that the way that he handled the merchandise was detrimental to the company; his attitude was belligerent and we were getting no place fast.

Q. What did he say? A. He didn't give a good God damn.

Q. He said that? A. Yes, that is right.

Q. Did he say anything else about your telling him how he should handle merchandise? A. Yes. He said
2004 that I might be a boss in Boston but this was no hick town, I was in New York now; he was the boss and he would do as he saw fit.

Q. Did he say anything else? A. I reminded him that he had someone else to answer to; that if he didn't think he should do his work and do it correctly, that there were delegates that I could appeal to. His answer was, "You try and get them. They will come when I send for them, not when you send for them. They sent me here on this job."

Q. Did you ever have any discussion with Weinheimer about his lunch hours? A. No, sir.

Q. Did you ever have any discussion with Weinheimer about his physical capacity to handle the truck? A. That one occasion only.

Q. Can you tell us when that occasion was? A. On a Saturday at noontime.

Q. Do you know the month? A. No, sir.

Q. Was it shortly after he came there? A. No.

Q. Could you say about how many months after he came there? A. It was the winter of 1938. I don't know what month.

Q. What was that conversation? 2006

Mr. Maguire: Objected to.
The Court: Overruled.
Mr. Maguire: Exception.

A. The conversation was that—I had smelled his breath and he had been drinking.

Mr. Maguire: I move to strike it out.
The Court: Strike it out.

Q. What did you say to him and what did he say to you? A. I said, "Ed, you have been drinking." He said, "So what?"

Q. And you said? A. I said, "I think it is very dangerous for you to drink on your lunch hour and then take a tractor and trailer out in the street and subject us to possible collision with a bus load or taxicab full of people and therefore hamper our possibility of staying in business." 2007

Q. What did he say to that? A. He told me he could drive a truck and trailer and if I didn't think he could, to call a policeman and let him judge.

Q. What did you say?

Mr. Maguire: I object to it as immaterial.

The Court: Overruled.

Q. Did you make any reply? A. I said it was useless to call the police because I had called them before.

Q. Mr. Goddard, did your company haul merchandise for the Liberty Mutual Insurance Company? A. Yes, sir.

Q. Between what points? A. Boston, New York, New Jersey, Philadelphia.

Q. Did Ed Weinheimer haul some of that for you? A. Yes, sir.

2009 Q. Do you remember an occasion upon which he hauled some such merchandise between New York City and Newark, New Jersey? A. Yes, sir.

Q. Did you have any conversation with him about that? A. Yes, sir.

Q. What was that conversation?

Mr. Maguire: I object to that.

Mr. Murray: May I have the time fixed?

The Court: Yes, fix the time.

Q. Will you fix the time of that, Mr. Goddard?

The Court: When was it?

2010 The Witness: I don't know.

The Court: Well, was it at the beginning of his employment or at the end of his employment or when was it? Can't you fix the time by any circumstance?

The Witness: No, sir, I can't.

The Court: Was it before the episode at Pier 88 or after?

The Witness: I would say it was before.

Q. What was that conversation?

Mr. Boudin: Objected to.
The Court: Overruled.
Mr. Boudin: Exception.

A. I asked him why he hadn't made the delivery.
The Court: Why he did what?
The Witness: Hadn't made the delivery.

Q. What did he say? A. He said he wasn't getting paid for taking stuff up inside a building.
Q. What did you say? A. I said we had given him a dolly cart and a helper. 2012
Q. You said that? A. Yes.
Q. What did he reply? A. It didn't make a God damn bit of difference; he isn't supposed to leave the sidewalk. The contract read "sidewalk deliveries," and that is all he was going to make.
Q. Now, Mr. Goddard, did you call attention to any of these incidents with Ed Weinheimer to his superiors in the union?

Mr. Boudin: Objected to as calling for a conclusion.
The Court: Sustained.

Q. Did you speak to anyone about any of these incidents? 2013

The Court: Yes or no.

A. Yes.
Q. To whom?

Mr. Boudin: Objected to.
The Court: He may answer.

Mr. Boudin: Exception.

A. The delegates.

Mr. Boudin: I move to strike it out. It calls for a conclusion.

The Court: Strike it out. What was the name of the man that you spoke to?

The Witness: Two men, Furey and Campbell.

Q. What are their full names? A. Austin Furey, I believe, and William Campbell.

Q. Did you ever have any conversation with Ed Wein-
2015 heimer about their position?

Mr. Boudin: That is objected to.

The Court: He may answer yes or no.

A. Yes.

Q. What was that conversation?

Mr. Boudin: Objected to.

The Court: Sustained.

Q. When Ed Weinheimer came to work for you in September, 1937, did you talk to him about Campbell and Furey with respect to their position in his union?

Mr. Boudin: That I object to as calling for a conclusion.

2016

The Court: I will sustain that objection. Did you have any conversation with Campbell?

The Witness: When?

The Court: Any time.

The Witness: Lots of times.

The Court: Did you ever have any conversation with Furey?

The Witness: Yes, sir.

Q. Will you stand and identify these men in this court room, if they are here.

The Court: You may go down off the stand if you wish.

A. Campbell is in the rear of the fourth gentleman in the front row (indicating).

Q. Is he in the rear row? A. In the middle row.

Q. In the middle row? A. That is right.

Q. Would you count what seat he is in from the end and tell us from which end. A. He is the third seat, second row.

Q. From which end? A. From that end over there (indicating). 2018

Q. The left end.

The Court: All right. Call the name of the defendant Campbell.

The Clerk: William Campbell.

(A man stood up.)

The Court: Is the man who has arisen in response to his name the person you have just identified?

The Witness: Yes, sir. And Austy is in the first seat, second row. Furey is in the first seat, second row.

The Court: Call the name of the defendant Furey. 2019

The Clerk: Austin Furey.

(A man stood up.)

The Court: Is the person who has arisen the person whom you identified?

The Witness: Yes, sir.

Q. Did you speak to Austin Furey about any of these incidents?

Mr. Boudin: Objected to.

The Court: Yes or no.

A. Yes.

Q. Which one or which ones? A. The one we just discussed.

Q. Which one was that? A. About Weinheimer refusing to deliver Liberty Mutual upstairs off the sidewalk.

Q. Whom did you speak to about that? A. Austin Furey.

Q. What was that conversation?

Mr. Boudin: Objected to as not binding on the
2021 union.

The Court: Objection overruled.

Mr. Boudin: Exception.

The Court: The Court will say again that it presumes that the jury understands that these conversations are to be considered only in the event that the jury are satisfied by the required measure of proof, one, that a conspiracy is established in this case and two, that these statements were made during the continuance of that conspiracy and in furtherance of it, and three, that it only affects those persons whom you find to have been in the conspiracy if you find there was a conspiracy. You may proceed.

2022 Mr. Boudin: I respectfully except to your Honor's instructions as insufficient under the circumstances.

The Court: Well, what other instruction do you request?

Mr. Boudin: If your Honor please, that no statement made by any person even if there is a conspiracy in a case like the present one is binding on the union——

The Court: That is an argument. I am asking you what specific instruction you want me to give the jury.

Mr. Boudin: That it must also be proved that there was specific authorization or specific ratification of the statement or of the act.

The Court: Yes.

Mr. Boudin: By those to be charged.

The Court: Yes. It must appear that the statement was either authorized or that it was thereafter ratified, and ratification will be appropriately defined for you within my limitations when the proper times comes. Proceed. 2024

(Last question read.)

The Witness: I said to Austin Furey that Weinheimer and his helper should have delivered that merchandise upstairs; that we lost a grade A account because of the actions of Weinheimer in that particular delivery. I further said to Furey that the man in charge of Liberty Mutual in Newark was an old sort of man and they left him with the cases on the sidewalk to do anything he pleased with them, but they wouldn't make the delivery upstairs.

Q. What did Furey say?

Mr. Boudin: I move to strike out the answer.

The Court: Denied. 2025

Mr. Boudin: Exception.

A. Furey said they had every right to make the delivery, that we had supplied them with a helper and the necessary equipment and he had absolutely no right to do what he done. He reprimanded him for it.

Q. Did you ever speak to Furey about the conversation you had with Ed Weinheimer about drinking? A. Yes, sir.

Q. What was that conversation? A. He said that he was not the one to decide how much a man could drink or couldn't drink on his own time, and what condition he was in to continue his work in the afternoon. He asked me how many drinks a man could have during his lunch hour and I said I didn't know.

Q. Did you speak to Furey or Campbell about the occasion to which you have testified upon which Weinheimer struck Lovell? A. Yes, sir.

Q. To whom did you speak? A. Campbell and Furey.

Q. In one conversation? A. Yes, sir.

Q. What was that conversation?

2027

Mr. Boudin: Same objection, if your Honor please.

The Court: Overruled.

Mr. Boudin: Exception.

A. I don't remember what their conversation was with me.

Q. You don't recall that conversation? A. Not with Furey and Campbell, no.

Q. Did you speak to any other member of Local 807 about it? A. Yes.

Q. With whom?

Mr. Boudin: Objected to as immaterial.

2028 The Court: He may state with whom.

A. With Weinheimer.

Q. With Weinheimer?

The Court: Well, he asked you about whether you spoke with any other person. Another person would not be Weinheimer. It would be somebody else, wouldn't it?

The Witness: That is right. No.

Q. Just with Campbell and Furey? A. Yes, sir.

Q. And you don't recall what that conversation was? A. Not right now I don't, no.

Q. Do you recall an occasion during this period in which there was a strike at Brookline? Do you?

The Court: What do you mean by "a strike at Brookline"? Do you mean Brookline, Massachusetts——

Mr. Ennis: His company. I was referring to his company, your Honor.

Q. At your company? A. Question again? 2030

(Question read.)

Q. That is, your company, in New York City? A. There were many strikes.

The Court: No. Strike out the answer. Repeat the question.

Q. (Reread.) A. Yes, sir.

Q. Did you have a discussion with Ed Weinheimer about that? A. Yes, sir.

Q. What was that conversation?

Mr. Boudin: Objected to.

The Court: When was it? 2031

Q. When was the conversation? A. I believe it was some time in January, 1938.

Q. What was the conversation?

The Court: Where was it?

Mr. Boudin: Objected to.

The Witness: Tenth Avenue.

Q. Where was it? A. On Tenth Avenue.

Q. On the street? A. In the office.

Q. In your place of business? A. Yes, sir.

Q. What was the conversation?

Mr. Boudin: That was objected to, if your Honor please.

The Court: Overruled.

Mr. Boudin: Exception.

A. I asked him to put the trucks back to work.

Q. Did you have any discussion about why the strike was called? A. Yes, sir.

2033 Q. What was that conversation?

Mr. Boudin: That is objected to.

The Court: Allowed.

Mr. Boudin: Exception.

A. He said that Lovell owed him an hour and a half overtime and no trucks were going to go back to work until the delegates showed up.

Q. Did he say why Lovell owed him an hour and a half overtime? A. He said he had an hour and a half overtime coming to him and the boss wouldn't pay it; so therefore we were not going back to work.

Q. Did he state for what work that hour and a half over-
2034 time was coming to him? A. Yes. He said that we had taken the truck into the terminal after we had discharged him for the day to do another hour and a half's work on it and he wanted to get paid for it.

Q. He wanted to get paid for work done by him? A. No.

Q. For work done on the truck? A. Yes.

Q. After he had been released for the day? A. Yes.

Q. Did he say anything else? Did he say why he was entitled to that overtime? A. No, sir. He was entitled to

it because he had driven the truck and he was supposed to be paid until such time as the truck was closed and ready for Boston.

Q. Do you remember on what day of the week that incident occurred? A. I think it happened on a Friday.

Q. Did your company work the next day? A. I don't think so.

Q. Upon what day of the week did you have this conversation? A. We had it on Friday.

Q. You had the conversation on Friday? A. I am pretty sure.

Q. The day on which the truck was backed in? A. Yes.

Q. What happened then? 2036

Mr. Boudin: I object to the form of the question.

The Court: Overruled.

Mr. Boudin: Exception.

A. I believe we worked Saturday a half-day and we didn't work Monday.

Q. You didn't work Monday? A. No, sir.

Q. Did Ed Weinheimer say anything to you in this conversation Friday about not working Monday?

Mr. Boudin: Objected to,

The Court: Grounds?

Mr. Boudin: On the ground that it is irrelevant and immaterial and not binding. 2037

The Court: Overruled on that ground.

Mr. Boudin: Exception.

A. He said that he wouldn't go to work Monday, nor none of the men would go to work until he got Lovell straightened out with the delegates.

Q. Was he talking about this hour and a half overtime? A. Yes, sir.

2038 *Russell B. Goddard—For Government—Direct.*

Q. Now, what happened when you got there Monday morning.

Mr. Boudin: That is objected to as to form.
The Court: Sustained.

Q. Did the men work the following Monday? A. No, sir.
Q. Was Ed Weinheimer there? A. Yes, sir.
Q. Did you have a discussion with him about their not working? A. Yes, sir.
Q. What was that conversation?

Mr. Boudin: That is objected to.
2039 The Court: Overruled.
Mr. Boudin: Exception.

A. He said it was useless for me to try to talk him into going to work or trying to put the men to work; that they were not going to until Campbell and Furey showed up.
Q. Did you talk to him about getting Campbell and Furey there? A. Yes, sir.
Q. What was said? A. I asked him if he would do what he could to hustle them along and he said, "They will be here in three weeks, four weeks. They are in no hurry."

Mr. Boudin: I move to strike it out.

2040 Q. What did you say?

The Court: Denied.
Mr. Boudin: Exception.

A. I asked him again to do what he could to get the delegates to get there so that I could straighten out that trivial matter of a dollar and a few pennies, so we could put the trucks back to work.

Q. What did he say? A. He just shrugged his shoulders and walked away from me.

Q. What else did you do that day with respect to the union officials to get the trucks back to work? A. I called the headquarters of Local 807.

Q. Whom did you speak to? A. Mr. Devery.

Q. What was the conversation? A. I said to Devery that my job was tied up because of a discussion between Weinheimer and Lovell over an hour and a half overtime; that they wanted it discussed with Furey and Campbell; the delegates hadn't arrived; our customers were hollering for trucks, and I wanted him to do something about it, and Devery said to me that no one other than Campbell and 2042
Furey had any right whatsoever to pull any job out on strike, unless they were there themselves to do it.

Q. What was Devery's position at that time? A. I believe he was president of Local 807.

Q. Did you in that conversation talk to him about whether or not Furey had pulled out the job on strike? A. I told him that Austy and Willie hadn't as yet shown up; I understood that they had been sent for; and I asked him if he wouldn't please talk to Weinheimer and see what he could do to get him to put the job back until such time as Campbell and Furey did get a chance to show up.

Q. What did he say? A. He asked to talk to Weinheimer.

Q. What did you say? A. I called Weinheimer from across the street and asked him to talk to the president 2043
of the local.

Q. What happened? A. He said hello to Mr. Devery and the next thing I heard him say——

Mr. Boudin: One moment. I object to that.

The Court: Whom did you hear say it?

The Witness: I said that I heard Weinheimer next say——

The Court: What did you hear him say?

The Witness: That the job was on strike, and the next thing he said is, "I don't give a good God damn if you are president or the Pope. This job is not going back to work, nor the men aren't going back to work until Austy and Willie show up."

Q. Austy and Willie who? A. Austin Furey and Willie Campbell.

Q. What happened then? A. Weinheimer then next said to Devery that he would go across the street and call him from a pay station.

Q. Then what did Weinheimer do? A. He walked out.

Q. In your presence he walked—— A. He walked out
2045 of the building and went across the street.

Q. Did you have a further conversation with Devery at that time? A. Yes.

Q. What was that conversation? A. Mr. Devery told me that if Weinheimer and the men refused to go to work, to get myself some new men and put them to work and Austy and Willie would be there as soon as they could to help straighten me out.

Q. What did you do? A. I called the Benjamin Motor and asked them if they——

Mr. Boudin: One moment. That is objected to.

The Court: Yes, sustained.

2046 Q. After this conversation with Devery did you make efforts to get other men to do the work?

Mr. Boudin: I object to that as calling for a conclusion.

The Court: Sustained.

Q. What did you do about getting other men to work after conversing with Devery?

Mr. Boudin: That is objected to.

The Court: Well, he said he telephoned to Benjamin Motor. Is that right?

The Witness: Correct, your Honor.

Q. Then what did you do? A. I asked them for a man.

The Court: No. Strike that out.

Mr. Boudin: I move to strike it out.

The Court: After you telephoned to Benjamin Motor, did any men come to your place?

The Witness: Yes, sir.

The Court: Did you put them to work?

The Witness: I attempted to. 2048

Q. What happened?

Mr. Boudin: Objected to.

Q. What did you see happen?

The Court: Just a moment. Was Weinheimer present?

The Witness: Yes, sir.

The Court: When these men came to your place did Weinheimer say or do anything in your presence?

The Witness: No, sir. I was in the office. He was across the street. 2049

The Court: Well, did you see him do anything?

The Witness: Yes, sir.

Q. What did you see him do? A. I saw him stop these men as they attempted to come into our office.

Q. What did you see? A. Nothing but a conversation amongst Weinheimer, these men and the other men that were hanging around outside.

Q. Then what did the men do? A. They came into the office. The first one.

By the Court.

Q. Did you have a conversation with him? A. Yes, sir.
Q. Did he go to work? A. No, sir.

By Mr. Ennis.

Q. Was there more than one? A. There were three.

By the Court.

2051

Q. How many came in the office? A. One at a time, sir.
Q. Did you see all three of them? A. Yes, sir.
Q. Did you have a conversation with each one? A. Yes, sir.
Q. Did any of them go to work? A. No, sir.

By Mr. Ennis.

Q. Do you see any of these men in court here? Will you stand up and look around. A. Carl Macomber (indicating).
Q. You see one of them? Will you state where he is over there? A. The back row, up against the wall.
Q. How far is it from your right-hand end? A. One,
2052 two, three.

The Court: What is the name?
The Witness: Carl Macomber.
The Court: You see Macomber here?
The Witness: Yes.
The Court: Where is he seated?
The Witness: Right over there with his hand on his mouth (indicating).

The Court: The clerk will call the name.

The Clerk: Carl Macomber.

(A man stood up.)

The Court: Is the man who has arisen the man whom you have identified?

The Witness: Yes, sir.

(Short recess.)

The Court: The clerk will call the roll.

(The roll of the defendants was called.)

The Court: Proceed.

By Mr. Ennis.

Q. You testified, Mr. Goddard, that the defendants whom you just identified and others came into your office after this telephone conversation you had with the other trucking companies? A. Yes, sir. 2054

Q. When you looked around did you see any of these other men in the court room? A. No, sir.

Q. Do you recall their names? A. I think one of them was Rosin.

Q. Rosin—R-o-s-i-n? A. Yes.

Q. Did he go to work? A. No, sir.

Q. In addition to Rosin and the defendants whom you identified, how many others came into your office? A. I believe there were four all together.

Q. Do you remember the names of the other two? A. No, sir, I do not. 2055

Q. Did they go to work? A. No, sir.

Q. Did you see all of them having conversations with Ed Weinheimer? A. Yes, sir.

Q. Did you hear any of those conversations? A. No, sir.

Q. Did Campbell or Furey come to your office on that day? A. Yes, sir.

Q. Did you have a conversation with them? A. Yes, sir.

Q. One conversation with both of them? A. Yes, sir.
Q. What was said and who said it?

Mr. Murray: If your Honor please, I object to the conversation on the ground it is outside the issues and no act pleaded in this indictment to sustain the allegations of the indictment.

The Court: Overruled.

Mr. Murray: Exception.

Q. What was said, Mr. Goddard, and who said it? A. I said to Campbell and Furey that our job had been tied up all day; our customers had been asking for their
2057 trucks; that since it being so long had disregarded the calls that they had given us. I said we were put out to some great extent; it was only an issue of an hour and a half's time involved in the entire situation. I said that people had entrusted merchandise to us from the Boston area for delivery that Monday morning in and around New York City, and that deliveries had not been made; the trucks had not rolled; I thought it was all uncalled for.

Q. Yes. A. Campbell said, "I don't think you can pay wages; I don't think you want to pay the union scale; the best thing for you to do is get the hell out of business and go back to Boston where you came from," and walked out and took the men with him and has never been back since. Subsequently, Brookline Trucking Company went out of
2058 business.

Mr. Boudin: I move to strike it out.

Mr. Maguire: I move to strike it out.

The Court: Strike it out. You were asked for a conversation. You need not volunteer anything.

Q. Did your company do any trucking out of the New York place that day? A. No, sir.

Q. How long did that strike last? A. Up until now.

Q. The company never did any further business? A. No, sir.

Q. Not out of New York? A. No, sir.

Mr. Boudin: I move to strike it out. I object to the question and move to strike it out.

By the Court.

Q. How long did you continue in the employ of the Brookline Company? A. I believe about two to three weeks after that, sir.

Q. When you left the company was it still doing any 2060
business? A. No, sir.

By Mr. Ennis.

Q. Do you recall any occasion during the period that Ed Weinheimer was working for you in which you chose an employee to work on one of your trucks?

Mr. Boudin: Objected to as immaterial.

The Court: Overruled.

Mr. Boudin: Exception.

A. Yes, sir.

Q. Can you tell us the time as best you can of that occasion? A. I am not sure of the time. I believe it was some 2061
time in February or March of 1938.

Q. Who was that employee? A. A fellow by the name of Brown.

Q. Brown? A. Yes.

Q. Did he apply to you for employment? A. Yes, sir.

Q. Did you see his union book? A. Yes, sir.

Q. What did it say on it?

Mr. Maguire: Objected to.

The Court: Sustained.

Mr. Maguire: Exception.

The Court: Well, I am not going to allow you to except when my ruling is in your favor.

Mr. Maguire: I beg your Honor's pardon. I didn't hear what your ruling was.

Q. Did you see the book? A. Yes.

By the Court.

Q. Did you examine it? A. Yes.

2063 Q. After you examined the book did you have any conversation with the defendant Weinheimer? A. At that particular moment, no, sir.

Q. Well, at some moments thereafter? A. Yes, sir.

By Mr. Ennis.

Q. Did you put that man to work? A. Yes, sir.

Q. Upon what truck did you put that man to work? A. On a truck that Weinheimer was driving.

Q. What was that load? What was on that truck? A. If memory serves me right, he had a few bales of textiles; the majority, or the balance of the load was small cartons of deviled ham weighing approximately twelve pounds apiece.

2064 Q. Where did that come from and where was it going? A. Watertown, Massachusetts, it came from and was going to various places for delivery in and around the New York area.

Q. What was the state of the load when you directed this Brown to work on that job?

Mr. Murray: Your Honor, might I have the time fixed?

The Court: Yes, sir. Can you fix the time?

The Witness: Time of what, day?

The Court: The time of the year.

The Witness: I would say it was some time in February.

Mr. Ennis: He did say that before.

The Court: I know he did, but he did not state specifically. Was it before or after you moved from Tenth Avenue?

The Witness: We were still on Tenth Avenue, sir.

The Court: Do you remember when you moved around to 20th Street?

The Witness: No. 2066

Q. Was Weinheimer working on that truck? A. Yes, sir.

Q. Did you see what he was doing at the time you directed this Brown to work on that truck? A. No, sir.

Q. Where was the truck? A. In the front part of the building.

Q. Was the truck fully loaded? A. No, sir.

Q. In what state was it? A. Three-quarters loaded.

Q. Was it being loaded? A. Unloaded.

Q. Who was unloading it? A. Weinheimer.

Q. Alone? A. Yes, sir.

Q. And you directed this Brown to work on the truck, too? A. I told him to go into the body and help Weinheimer. 2067

Q. To go into the body of the truck and help Weinheimer? A. Yes, sir.

Q. Leaving that for a moment, did you ever discuss this incident with Campbell or Furey? A. Yes, sir.

Q. With which one, or was it both? A. Austin Furey.

Q. When? How long after this incident? A. About four hours; three or four hours.

Q. What time of the day did you direct Brown to go into the truck A. 10,30 in the morning.

Q. And three or four hours later you discussed it with Furey? A. Yes.

Q. What was that conversation?

Mr. Boudin: Objected to.

The Court: Allowed.

Mr. Boudin: Exception.

Q. Where was that conversation? A. In the headquarters of Local 807.

Q. Where is that? A. Varick Street, downtown, Man-
2069 hattan.

Q. Did you make an appointment to go there and meet Furey? How did you come to get there? A. I called the union hall and asked for Furey.

Q. Whom did you speak to? A. Walter Larkin.

Q. What did he say? A. He said that Furey was in the office. If I wanted to see him I had better get down there while he was there.

Q. And you went down and saw Furey? A. Yes.

Q. What was the conversation?

Mr. Boudin: Objected to.

The Court: Allowed.

Mr. Boudin: Exception.

2070 A. I said to Furey that my job was tied up. He said he knew it. And I wanted to know what he intended to do about it, and he said "nothing."

Q. In this conversation did you discuss with Furey your right to employ Brown?

Mr. Boudin: Objected to as calling for a conclusion.

The Court: Sustained.

Q. Did you talk to Furey about your putting Brown to work? A. Yes, sir.

Q. What did you say?

Mr. Boudin: Objected to.

The Court: Overruled.

Mr. Boudin: Exception.

A. I said if Local 807 and its officers had not discriminated between the difference between a black man and a white man due to the fact that his union book was paid up—

Q. Whose union book? A. Brown's union book was paid up a month in advance. 2072

Q. Was he a colored man? A. Yes.

Mr. Boudin: I move to strike out the answer insofar as already given.

The Court: Denied.

Mr. Boudin: Exception.

Q. Proceed. A. (Continuing) That it was not my responsibility to discriminate as to the men that he chose as members of his organization.

Q. What did he say? A. He said that I had no right to hire that black bastard, and I never would hire a nigger on that job, and if I did he would tie me up forever and a day. 2073

Mr. Boudin: If your Honor please, I move to strike out that answer.

The Court: Denied.

Mr. Boudin: Exception.

Q. Did he say anything else about Brown? A. Yes.

Q. What did he say? A. He said he knew he got a beating and that it was too God damned bad he didn't get murdered.

Q. Did Furey say anything to you in that conversation about you choosing your 807 men to work your trucks? A. Yes, sir.

Q. What did he say?

Mr. Boudin: The same objection.
The Court: Overruled.
Mr. Boudin: Exception.

A. He said if I had needed a man I should have gone to Weinheimer and he would have got the man; that Weinheimer was to appoint the men for that job, and I was to be satisfied with them men.

2075 Q. Now, leaving this conversation and going back to 10.30 in the morning when you told Brown to go into the body of the truck, what did you see happen on that truck?

Mr. Boudin: Objected to.
The Court: Overruled.
Mr. Boudin: Exception.

A. The next thing I saw was Brown with his hand bleeding.

Q. Where was he standing? A. He had just come off the truck into the warehouse with a two-wheel truck load of this small canned goods, wheeled it against the wall ready to stack up.

2076 Q. Then what happened? A. Weinheimer came out of the body with a hook in his hand.

Q. What kind of a hook? A. A loading hook.

Q. What is that? A. A loading hook is an instrument that we use for leverage on heavy merchandise.

Q. What is it made of? A. A piece of steel shaped like a question mark with a wooden handle.

Q. Has it got a point? A. Definitely.

Q. And he was carrying this loading hook? A. Yes, sir.

Q. What did he say?

Mr. Boudin: Same objection.
The Court: Overruled.
Mr. Boudin: Exception.

Q. Or what was said? A. He said to Brown, "You black bastard, you can't work on this job or any other job that I work on."

Q. What did he say? A. Brown said to him, "If you say that again you are going to get hurt." And Weinheimer said it again and Brown hit Weinheimer.

Q. Then what happened? A. Brown took the hook away from Weinheimer, and, as I remember it, he ran to 2078
the bench.

Q. Who ran to the bench? A. Weinheimer.

Q. What bench? A. We had a bench in the place where we used to——

Q. A work bench? A. Just a small work bench that the mechanics worked on.

Q. Yes? A. And grabbed a piece of pipe and came at Brown. Brown took the pipe away from him and hit him again and knocked him down.

Q. Yes. Then what happened? A. Weinheimer took his hat and coat and walked out of the building and into a car across the street and drove away.

Q. Did he say anything before he drove away in your presence? Did he say anything to Brown? 2079

Mr. Boudin: Objected to.
The Court: Yes or no.

A. Yes.

Q. What did he say?

Mr. Boudin: Objected to.
The Court: Overruled.
Mr. Boudin: Exception.

A. He said, "You'll pay for this you black bastard, with interest."

Q. Then what happened? A. Weinheimer drove away and Brown and I continued working.

Q. What did you do? What work were you doing? A. Nothing. I was just standing inside the body where Brown was stacking this hand truck with merchandise.

Q. You were standing in the truck? A. Yes. It was new to him.

Q. Yes? Then what happened? A. The next thing, there was two carloads of men——

Q. How long was that after Ed Weinheimer left? A. A
2081 period of five or ten minutes.

Q. Two carloads of men what? A. Came into the building and set upon Brown.

Mr. Murray: I move to strike it out, if your Honor please.

The Court: Denied.

Mr. Murray: Exception.

Q. Did you recognize any of those men? A. Yes, sir.

Q. How many men were there? A. About eight.

Q. What were the names of those you recognized? A. Weinheimer and George Stolowitz.

Q. George who? A. Stolowitz—Frank Stolowitz.

Q. Is Stolowitz in this court room? A. Yes, sir.

2082 Q. Will you point him out? A. There (indicating).

Q. What row is he in? A. That front row.

Q. What one? A. This man in the front row (indicating).

Q. From which end? A. From this end here, next to the last up against the wall (indicating).

Q. On the bench? A. That is right. Next to the last man.

Q. Next to the last man on the bench? A. Yes.

Mr. Ennis: May the clerk call the name of Frank Stolowitz?

The Court: Call the name Frank Stolowitz.

The Clerk: Frank Stolowitz.

(A man stood up.)

The Court: Is the man who has arisen the person you identified?

The Witness: Yes.

Q. Was there anyone else besides Ed Weinheimer and Stolowitz among those eight men whom you knew by name? A. Yes. I think there are two, but it is not clear in my mind.

2084

Q. Well, who are they?

Mr. Boudin: Objected to.

The Court: Yes, I will sustain the objection until he has been asked first if there are any other persons here whom he can identify.

Q. Are there any other persons here whom you can identify as being among those eight men? Will you stand up and look around? A. (Standing.) No, sir.

Q. No others? A. No, sir.

Q. What happened?

Mr. Boudin: That is objected to as to form, if your Honor please.

2085

The Court: Well, what did you see anybody do in the presence of Weinheimer?

The Witness: I saw these men beat Brown up.

Q. What did they hit him with? A. A piece of a plank, chock.

Q. What is a chock? A. A chock is a solid piece of wood that is bound by iron with a chain on it that we throw underneath the wheel to hold it in place.

Q. To hold what in place, the truck? A. That is right. If you are on an incline, to break the momentum, you throw a chock underneath the wheel.

Q. Did you see someone hit Brown with a chock? A. Yes.

Q. Do you know which one hit him with a chock? A. No, sir, I don't.

Q. Do you know which one hit him with the plank? A. No, sir.

Q. Did each one of the eight men hit him? A. Yes, sir.

Q. Well, what else did they hit him with? A. There was various things around the building, small pieces of
2087 pipe, a monkey wrench.

Q. Monkey wrench? A. Yes. Hands, their feet.

Q. Did they kick him? A. Definitely.

Q. What did Brown do? A. Brown done the best he could under the circumstances, and the fight——

The Court: Strike that out. We don't know what the circumstances were excepting what you have described. We can't tell that. You can tell what you saw him do, if you saw him do anything.

Q. How long did they beat Brown? A. A few minutes.

Q. A few minutes? A. Yes.

Q. How long is that? A. I would say five minutes; five to ten minutes.

2088 Q. Did you see any blood? A. Lots of it.

Q. Whose? A. Brown's.

Q. How did he look? A. Horrible.

Q. Was his face bleeding? A. Yes, sir.

Q. What did they say while this was going on? A. There wasn't much conversation, none that I remember.

Q. What did he say? A. Well, he said, after they got through hitting him, he pushed through the crowd and picked up his hat and said if there was any one of the

eight that wanted to fight him single handed one by one, to come outside.

Q. How about his teeth? A. They were knocked out.

Q. His front teeth were knocked out? A. Yes, sir.

Q. What did they do when he offered to take them on one at a time? A. They walked out of the building.

Q. Now, you testified that a few hours after this happened—before we leave that incident, after this beating of Brown, did you on that occasion have any further discussion with Ed Weinheimer? A. Yes, sir.

Q. What was that conversation? A. He said he would not put that job back to work until I got rid of Brown.

Q. What did you say? A. I said that I had no right 2090
to get rid of Brown; that I had hired him and I intended that he should work.

Q. What did he say? A. He said, "If you want Brown then you don't want the job to roll; you are tied up."

Q. Did the job roll? A. After I had a talk with Furey that afternoon.

Q. Well, let us go back to that talk with Furey that afternoon. When you spoke to Furey did he say anything to you concerning his knowledge of this incident before you spoke to him? A. Yes, sir.

Q. What did he say? A. He said he was at Liberty Forwarding at 25th Street.

Q. 25th and where? A. Tenth Avenue.

Q. Yes? A. He knew what was going; he sent the men 2091
down there.

Q. He said that he sent the men down there? A. Yes, sir.

Q. What else did he say? A. He said it was too God damn bad that black bastard didn't get murdered.

Q. Did Furey say anything about your job going back to work? A. Yes, sir.

Q. What did he say? A. He said, "Put Weinheimer back to work; pay the nigger; don't let him work; if you

do let him work or any other colored man," he said, "I will tie you up forever and a day."

Q. Was anything else said at that conversation? A. That is all.

Q. Then you went back to your place of business? A. Yes, sir.

Q. What did you do? A. Put Weinheimer back to work; paid Brown off; got my trucks rolling; went about my business.

Q. About what time of the day was that? A. If I remember correctly it was some time between three and four in the afternoon.

2093 Q. And you had put Brown on the job around ten, you say? A. Yes, sir.

Q. Do you recall an incident, Mr. Goddard, at all in which you had some discussion with Ed Weinheimer about a payroll which was late? A. Yes, sir.

Q. Will you tell us the time of that discussion as best you can? A. I haven't any idea. It was on a Saturday afternoon. It was in the winter of 1938.

Q. In the winter of 1938? A. Yes, but I don't remember the date.

Q. You don't remember what month it was in? A. It is not clear in my mind, no, sir.

Q. But it was the winter of 1938? A. Yes, sir.

Q. Where did that discussion take place?

2094 The Court: Now, just a moment, let us see when the winter of 1938 was.

Mr. Ennis: I am sorry.

By the Court.

Q. Was it the fore part of 1938 or the latter part of 1938? A. If it please your Honor, there aren't any of these particular dates which are clear in my memory.

Q. Well, does the month of December come in the winter? A. Yes, sir.

Q. And what is the difference between December of one year and December of the next year? A. It is a year apart.

Q. Now, what we want to know is whether this was the end of the year 1937 or the early part of 1938, or was it the latter part of 1938? A. I see what you mean. It was after January, 1938, I am pretty certain.

By Mr. Ennis.

Q. It was after January, 1938? A. Because we didn't start sending the payroll down by Western Union, if my memory serves me correctly, until after January, 1938. 2096

The Court: Well, was it before the winter was over?

The Witness: Yes, sir.

Q. Where was that discussion held? A. In the Western Union office.

Q. In the Western Union office, whereabouts? A. 23rd Street and Ninth Avenue.

Q. Who was present besides Ed Weinheimer and yourself? A. Joe Gillon, John Morton; I think Frank DeCanto; I am not sure.

Q. Were they drivers for you? A. Yes. 2097

Q. What was the conversation about the payroll?

Mr. Boudin: Objected to.

The Court: Overruled.

Mr. Boudin: Exception.

A. The payroll amounted to over $300 that was directed to the Western Union office——

The Court: No. What was the conversation? You are telling us now about the payroll. We want to know what the conversation was that was had. Who said what to whom?

The Witness: Weinheimer said he was supposed to be paid before 3 o'clock in the afternoon, and if the Western Union did not have the money that was not his fault.

Q. Was the payroll you were to get at Western Union to pay off these men and Weinheimer and the other men you mentioned? A. Yes, sir.

Q. That Saturday afternoon? A. Yes, sir.

2099 Q. And Weinheimer made this remark? Now, what did you say? A. I said it was not my fault that the 23rd Street branch did not have that amount of money, and the manager had to go somewhere else looking for it.

Q. What time of the day was it? A. Around 3 o'clock in the afternoon; 3.15.

Q. 23rd Street branch of what? A. Western Union.

Q. I see. What else was said? A. He said it would cost me an hour's overtime for every man on the job.

Q. How long were you there in that office with Weinheimer and the other men? A. I guess we waited about a half, three-quarters of an hour.

Q. Had the manager of that branch gone some place else? A. Yes, sir.

2100 Q. What else was said? A. I don't recall any further conversation.

Q. While you were waiting there with these men did you make any attempt to leave the room? A. No, sir.

Q. You did not at this time? A. No, sir.

Q. Did you leave that place with these men? A. Yes, sir.

Q. Where did you go? A. I believe I went to my hotel room and paid them off.

Q. Did they go with you? A. Yes, sir.

The Court: Where was the hotel?

The Witness: Cornish Arms Hotel, at 23rd Street, your Honor.

Q. Did you have any discussion with them there about the payroll? A. At that particular Saturday, no, sir.

Q. Was anything further said about overtime pay in your hotel room? A. No, sir. We were just forced to pay them an hour's overtime.

Q. And you did pay them an hour's overtime? A. Yes, sir.

Q. Do you recall any other time in which you discussed a late payroll and overtime with Ed Weinheimer? A. Yes, sir. 2102

Q. When was that? A. The Saturday after that.

Q. The Saturday after this occasion? A. Yes, sir.

Q. Where was the discussion held? A. In our office.

Q. Where was your office then? A. At 20th Street.

Q. Who was present? A. Weinheimer, Morton, Gillon, John Weinheimer and some others.

Q. John Weinheimer? A. Yes, sir.

Q. Was John Weinheimer working for you at that time? A. No, sir.

The Court: Is this Tenth Avenue or 20th Street?

The Witness: 20th Street. 2103

Q. He was not working for you at that time? A. No, sir.

Q. Do you see John Weinheimer in the court room? A. Yes, sir.

Q. Will you indicate where he is sitting? A. The gentleman right here (indicating).

Q. What row? A. In the front row. I think it is the third seat from the end.

The Court: The clerk will call the name.

The Clerk: John Weinheimer.

(A man stood up.)

The Court: Is the person who has arisen the person whom you identified?

The Witness: Yes, sir.

The Court: Proceed.

Q. What was the conversation in your office?

Mr. Boudin: Objected to.

The Court: Overruled.

Mr. Boudin: Exception.

2105

A. I said to the men earlier in the day that I had heard from Mr. Lovell——

Mr. Boudin: I move to strike that out on the ground that it is not responsive.

The Court: You had better wait until the answer is finished. Proceed.

A. (Continued) I had explained to the men in the early part of the——

Q. Now, just what you said. You said— A. I said to the men in the early part of the day that Mr. Lovell had called from Boston; he said he could not meet his payroll; therefore, there would not be any need for them to wait any

2106 further in the day. I said, "I will go to his brother on 25th Street to see if I could borrow enough to give you $15 or $20 apiece. There is nothing further I can do."

Q. Did Ed Weinheimer say anything? A. Yes, sir.

Q. What did he say? A. "I want every God damn nickel that is coming to me and every man on the job, today, now."

Q. What did you say? A. I said, "There isn't any means of my getting it for you. If Mr. Lovell sees fit to disre-

gard his obligation to you and myself and the rest of the men, I don't think you can hold me responsible."

Q. Did you leave the room? A. No, sir.

Q. I understood you to testify that you stated you would go to a brother? A. Yes, sir.

Q. To get the money for the men? A. Yes, sir.

Q. What did you do after this conversation? A. I stayed right in the office.

Q. Did you walk towards the door? A. Yes, sir.

Mr. Boudin: I object to that as immaterial.

The Court: Overruled.

Mr. Boudin: Exception.

2108

Q. What happened?

Mr. Boudin: Objected to.

The Court: Overruled.

Mr. Boudin: Exception.

Q. What happened? A. I was not allowed out of the office.

The Court: Strike that out. What happened, if anything?

Q. Did anyone touch you? A. Just to push me away from the door.

2109

The Court: Who did it?

The Witness: I am not sure, your Honor.

Q. What was said? A. "You stay here until the payroll comes."

Q. What did you say? A. I said that I wanted to get my train and go to Boston.

Q. Did Ed Weinheimer say anything to them? A. Yes, sir.

Q. What?

Mr. Boudin: Objected to as immaterial.
The Court: Overruled.
Mr. Boudin: Exception.

A. He said, "You stay right here until everyone of us is paid. You are the manager; you gave us the work; we want our money from you."

Q. What did you say? A. I said that I had no means of paying them off other than to go to his brother and get enough to tide them over until Mr. Lovell arrived on Monday morning.

2111 Q. What else was said there that day?

Mr, Boudin: That is objected to as to form, if your Honor please.
The Court: Overruled.
Mr. Boudin: Exception.

A. I said I would call the police so I would be allowed to leave the office; and he said he did not give a God damn for the Police Department, Federal Government or anybody else, and that he wanted his money and he meant to get it.

Q. What did you say to that? Did Ed Weinheimer say that? A. Yes, sir.

2112 Q. What did you say? A. I said the day would come when he would regret many of the things that he had done and said.

Q. Did you finally leave the office? A. Eventually, yes, sir.

Q. And these men left the office? A. Not when I did, no, sir.

Q. They were still there when you left? A. No, sir.

Q. What time did you leave? A. I believe I left there in time to catch the 6 o'clock train.

Q. What time did that conversation in the office start? A. Around noontime; noontime between twelve and one.

Q. What time did you first state that you were about to leave? A. A little after 11 o'clock.

Q. After 11 o'clock in the morning? A. Yes, sir.

Q. And you were in this office with the men from 11 o'clock? A. Yes, sir.

Q. Until what time? A. I think I left somewhere around a quater of 5, 5 o'clock.

Q. What time did you first talk to Weinheimer about the payroll? A. Before noontime.

Q. On that day? A. Yes, sir.

Q. Now, Mr. Goddard, you testified to an occasion at a pier where Ed Weinheimer struck your employer Lovell? 2114
A. Yes, sir.

Q. Was there any talk, or did you hear any conversation at that time between Weinheimer and Lovell or with yourself——

Mr. Boudin: That is objected to.

The Court: I will sustain the objection as having already been answered, except that you may ask him if there was anything further said and not heretofore testified to.

Mr. Ennis: That was my intention.

Q. Upon that incident was there anything further said to which you have not testified? A. Yes, sir. 2115

Q. What was said? A. Mr. Lovell said to Weinheimer that there was laws that would protect an employer being struck by an employee.

Q. What did Weinheimer say? A. The only laws that he knew was what Austy and Willie and he made.

Q. Who are Austy and Willie? A. He had reference to Campbell and Furey.

Q. Did he say anything else along that line? A. Sir?

Q. Did he say anything else along that line at that time? A. No, sir.

Q. While you were employed here in New York for Brookline did your company transport chickens? A. Yes, sir.

Q. From what points to what points? A. From Canton, Massachusetts, to the Gansevoort Market at 14th Street.

Q. What time did such shipments arrive in New York? A. We arranged them for a 6 o'clock delivery every morning.

Q. At the market? A. Yes.

Q. Did you have any discussion with Ed Weinheimer about those shipments? A. Yes, sir.

2117

Q. What was that discussion?

Mr. Boudin: Objected to.
The Court: Overruled.
Mr. Boudin: Exception.

A. He said that the men would have to be paid, he in particular, because he was shop steward, from the time the truck arrived in the Gansevoort Market at 6 o'clock until such time as he went to work at 8 o'clock. In other words, he wanted two hours overtime from the time of the arrival until the time the truck was unloaded.

Q. Did he state that he had the right to unload the truck at 6 o'clock in the morning? A. Yes, sir.

2118

Q. Well, did he unload the truck? A. No, sir.

Q. What conversation did you have about that?

Mr Boudin: Objected to.
The Court: Overruled.
Mr. Boudin: Exception.

A. He said the road driver could unload the truck, and it would cost $2 for every load that we transported into the city, to be paid to him.

Q. He said that? A. Yes, sir.

Q. Was there any discussion about the time of unloading? A. Not that I recall, no, sir.

Q. Did he state that he would unload the chickens at 6 o'clock in the morning? A. He said that he would not.

Q. That he would not? A. No.

Q. Did he state at what time he would unload them? A. He had no intention of unloading them then.

Q. Did he say that? A. Yes.

Q. Well, did you talk to him about your practice of unloading them at 6 o'clock? A. Yes, sir.

Q. What was that conversation? A. I said that the chickens had to be in to Lass & Cohen at 6 o'clock. He said, "Let the road driver unload the chickens and I will collect the $2." 2120

Q. What did you say to that? A. I referred it to Mr. Lovell. I had no further conversation.

Q. Following that matter did you have any further conversation about Ed Weinheimer about unloading these chickens? A. Yes, sir.

Q. What was said?

Mr. Boudin: Same objection.

The Court: Overruled.

Mr. Boudin: Exception.

The Court: Fix the time.

The Witness: This was in the regular course of our work during the winter of 1938, sir. 2121

The Court: That is 1937 and 1938?

The Witness: Yes, sir.

Q. What was said? A. That we should get up in the morning—"And buy our breakfast, buy a cigar and ride to work in a taxicab and somebody else could do the work."

Q. In that statement did he mention this $2 that he was being paid for the chickens that others were unloading?

Was he talking about that $2? A. Yes, sir; he said he would get paid and somebody else done the work.

Q. Did you talk to Campbell or Furey or both of them about that? A. Yes, sir.

Q. What was the conversation?

Mr. Boudin: Objected to.
The Court: Overruled.
Mr. Boudin: Exception.

By the Court.

Q. Tell us when? A. Sir?

2123 Q. When was it? How soon after? A. At about the same time that this was taking place.

Q. The same day? A. No.

Q. How many days after? A. It is hard for me to say, sir, I don't know.

Q. Is it a matter of days or weeks or months? A. Sometimes if we sent for them Monday they might show up a week from Thursday.

Q. No, how many times did you have this conversation with the defendant Weinheimer about the breakfast and the cigar? A. Just once.

Q. All right. Now, the question was whether you had a conversation with Furey and Campbell after that, and you said yes? A. Yes, sir.

2124 Q. And when was that? A. About a couple of weeks after.

By Mr. Ennis.

Q. What was said? A. I explained to Furey and Campbell about the unloading of the chickens and taxing overtime, and the work wasn't being done, and he told us it was in accordance with my contract that a man had to be paid

for any hours prior to their regular starting hours at 7 o'clock, and that it was perfectly all right.

Q. Did you tell Furey that Weinheimer was not doing the work? A. Furey told me that if we paid him he should show up.

Q. Well, did he say anything further about it? A. That is all, sir.

Q. Was anything said about Furey doing anything about it? A. No, sir.

Q. You just stated that a reference was made in that conversation with Furey to your contract? A. Yes, sir.

Q. During this period did Brookline have a contract with Local 807? A. Yes, sir. 2126

Q. Did you have any discussion with Ed Weinheimer about arbitration under that contract? A. Many times.

Q. Can you recall one matter or incident concerning which you talked arbitration with Weinheimer? A. No particular incident.

Q. Well, was there any particular matter that you wanted arbitration on? A. Yes, sir.

Q. And that you spoke to Ed Weinheimer about? A. Yes, sir.

Q. What was that matter? A. In regard to his assault on Mr. Lovell on Pier 88.

Q. When did that conversation take place? Was it shortly after the assault? A. Yes, sir.

Q. Within a week? A. The same day.

Q. The same day? A. Yes. 2127

Q. What was that conversation? A. Well, Weinheimer had been fired for that assault.

Q. Who fired him? A. Mr. Lovell.

Mr. Maguire: I move that it be stricken out as not responsive.

The Court: Strike it out.

Q. Well, going back to the occasion of that assault, after the assault did Lovell say anything to Weinheimer?

The Court: In your presence?

Q. Yes, in your presence? A. No.

Q. Well, then, going to your conversation after the assault on the same day with Weinheimer, what did you say and what did Weinheimer say? A. I said to Weinheimer that this time I was going to demand arbitration.

Q. And what did he say? A. He said, "You will get arbitration when Austy and Willie want to give it to you and not before."

2129 Q. What did you say? A. I said I would see Austy and Willie and see if I couldn't do something about straightening it out so we could go along progressively and mind our own business.

Q. Did you see Furey and Campbell about that incident? A. Yes.

Q. Did you talk to them about arbitration? A. Yes, sir.

Q. How long after this conversation with Weinheimer? A. Some time during that same week.

Q. What was said? A. They told me to put him back to work. I said I wanted arbitration. They said, "Put him back to work and we will give you arbitration."

Q. Did you put him back to work? A. Yes, sir.

2130 Q. And did you get arbitration? A. Yes, sir.

Q. What happened?

Mr. Maguire: That is objected to as immaterial.

The Court: Yes, the form of the question. Sustained.

Q. Did you have any further discussion with Campbell and Furey about this arbitration? A. No further discussion, no, sir.

Q. Did you have any further discussion with Ed Weinheimer about that arbitration? A. No, sir.

Q. Did Ed Weinheimer continue to work for you until Brookline stopped business? A. Yes, sir.

Q. Mr. Goddard, did you testify before the Grand Jury in this case? A. Yes, sir.

Q. Do you remember when? Place the time as best you can. A. I would say March or April, 1938.

Q. Did you have any conversation with the defendant Ed Weinheimer about your testifying?

Mr. Boudin: Objected to.

The Court: Sustained. 2132

Q. Did you have any conversation with Ed Weinheimer about that time? A. Yes, sir.

Q. Where did that conversation take place? A. On 20th Street.

Q. 20th Street and where? A. Tenth Avenue.

Q. Who was present? A. Just the both of us.

Q. Just the two of you? A. That is right.

Q. What was that conversation?

Mr. Murray: I object.

Mr. Maguire: I object.

The Court: Sustained.

Mr. Cahill: If your Honor please, we would like to be heard on that. 2133

The Court: I will give you an opportunity to be heard later on it.

Mr. Cahill: I would like to direct your Honor's attention to page 14 of the indictment, subsection (b).

Q. Do you remember one occasion when you came to the court house to testify before the Grand Jury? A. Yes, sir.

Q. Upon which when you left the building you were accompanied by someone?

Mr. Boudin: I object to that.

The Court: I will sustain the objection.

Q. Did you have any further conversations with Ed Weinheimer arising out of the assault upon Lovell?

Mr. Boudin: I object to that.

The Court: Sustained unless it is fixed as to time. It might have happened yesterday.

2135 Q. Did you in the spring of 1938, before the end of May, have any further conversation with Ed Weinheimer about that occurrence at the pier?

The Court: Yes or no.

A. I don't recall.

Q Well, turning your attention, Mr. Goddard, to the occasion of this stoppage of work where there was a discussion about an hour and half's overtime: Do you recall in the spring of 1938, before the end of May, a further discussion with Ed Weinheimer about it? A. About the incident on Pier 88?

Q. No. Now I am turning your attention from the
2136 incident on the pier and to the incident of the stoppage of work in your plant with respect to the hour and a half overtime. Do you recall that incident of the——

The Court: Now, don't argue with the witness. He is here to answer your questions.

Mr. Ennis: I am sorry.

A. Yes, sir.

Q. When was that conversation? A. (No answer.)

Q. Was a Mr. Klein present at that conversation? A. Yes, sir.

Q. Was that conversation in the spring of 1938? A. Yes, sir.

Q. About what month? A. April.

Q. April? Where did it take place? A. 20th Street.

Q. 20th Street and what? A. Tenth Avenue.

Q. What was the substance of the conversation between you and Weinheimer

Mr. Boudin: Objected to.

The Court: I sustain the objection to that for the present because I will take it up in connection with the suggestion made by Mr. Cahill and see whether that is related to the other conversation you spoke about. 2138

Mr. Ennis: It was my purpose to prove that, your Honor, and I won't go further—may I proceed with that conversation, your Honor?

The Court: No.

Q. Mr. Goddard, you testified that you did appear before the Grand Jury?

The Court: Yes, he did testify to that.

Q. Yes. In the spring of 1938. After you left this building what happened to you? 2139

Mr. Boudin: I object to that.

The Court: You mean following his appearance before the Grand Jury?

Q. Following your appearance before the Grand Jury did you meet Ed Weinheimer?

Mr. Boudin: I object to that.

The Court: I sustain the objection. Do you claim that after he appeared before the Grand Jury that whatever happened or was done by Weinheimer was in pursuance of the conspiracy alleged in the indictment?

Mr. Cahill: No, not at all, your Honor, but first let me say that what happened then may very well be admissible as an admission against Weinheimer, and is certainly admissible under paragraph (b) of page 14 of the anti-racketeering indictment.

The Court: Well, I am going to hear you on that later.

2141

Mr. Cahill: To which I direct your Honor's attention at this time.

The Court: We are trying now two indictments here, both charging conspiracy.

Mr. Cahill: And both indictments have the same allegation in this respect.

The Court: I understand that, but when a conspiracy ends you can't admit testimony to prove the conspiracy, after it has ended.

Mr. Cahill: But the conspiracy hadn't ended at this time.

The Court: I don't know. I am going to find that out as far as I can.

Mr. Cahill: The witness has given us the date. 2142
He said it was March or April, and the indictment alleges that the conspiracy continued through May 31st.

The Court: Indictments always allege it up to the time of the filing of the indictment, but there is some ground for the Court to make a construction as to whether after a man knows that he is going to be apprehended or has been apprehended, he continues in the conspiracy after that.

Mr. Cahill: And I submit, your Honor, that even if the conspiracy had ended, that the conduct of the defendant would be admissible against him as an admission on his part.

The Court: Well, we are not going into that now.

Mr. Ennis: If the Court please, I will merely finish the witness' testimony, bringing him up to that point and asking him only about the conversation about Weinheimer with respect to this strike on overtime, that was had in the presence of Klein.

The Court: When was the conversation?

By Mr. Ennis. 2144

Q. When was this conversation? Only about the overtime strike that you had with Weinheimer in the presence of Klein. Will you fix the time? A. April, 1938.

Q. April, 1938? A. Yes.

The Court: Was that the conversation at 20th Street and Tenth Avenue? The same conversation?

The Witness: Well, you got me confused now.

The Court: You had better not press that at this time.

Mr. Ennis: That incident is the last of his testimony.

The Court: All right, you may reserve the right to further examine him on that point. 2145

Mr. Cahill: We should like to be heard, if your Honor please, before the cross-examination begins on this point. We respectfully submit that you haven't heard us on that point.

The Court: Yes, of course. I know you haven't.

Mr. Cahill: And we would like to make an offer of proof before the cross-examination begins, in the absence of the jury.

The Court: How is the cross-examination going to affect this situation?

Mr. Cahill: If your Honor please, it is hard to foretell, but we submit we are entitled to finish direct, and we want to make an offer of proof.

The Court: Well, we will recess until tomorrow morning at 10.30. I will hear you tomorrow morning at ten minutes after ten.

(Adjourned to April 23, 1940, at 10.10 A. M.)

2147 New York, April 23, 1940,
10.10 A. M.

TRIAL RESUMED.

(The following proceedings were had in chambers:)

Mr. Cahill: The Government offers to prove the following from the witness Goddard now on the stand:

That in April, 1938, Goddard was called under subpoena to testify before the Grand Jury in proceedings preliminary to the indictment in the instant case. Goddard stated this fact in the presence of the defendant Edward Weinheimer on the day Goddard was to appear before the Grand Jury. Goddard thereafter went to the court house. Goddard left the court house and met an
2148 attorney to discuss his suit. Goddard and this attorney then set out from the attorney's office. On the street Goddard and the attorney met a group of men including Edward and John Weinheimer. The attorney and Goddard then attempted to serve these men with the summons and complaint in this civil action. The defendant Edward Weinheimer said to Goddard, "You keep your God damn nose out of our business." John Weinheimer then said to Goddard, "As for you, if you don't keep your God

damn mouth shut, this is what you will get." The Government further offers to prove that at this point John Weinheimer struck Goddard in the face and knocked Goddard down. The Government further offers to prove that John Weinheimer then said, "The next time you won't be able to get up," and kicked Goddard in the body with his foot. The Government offers this evidence on the following two theories:

First, the evidence is admissible against all of the co-conspirators because the acts sought to be proved fall within the period of the conspiracy as charged in the indictment and go to prove a material allegation in the indictment.

2150

The second theory on which the Government offers the proof is that whether or not the first be accepted, the evidence is admissible against Edward and John Weinheimer to indicate consciousness of guilt.

Now addressing myself to the first point, your Honor, that it is admissible under the conspiracy, I call your Honor's attention to the practically identical paragraph that appears in both indictments. I think I can quote it substantially from here. It appears on page 14.

The Court: Well, I read it. I know what it is.

Mr. Cahill: I would just like to refer to it if I may, your Honor. The paragraph is on page 14 of the anti-racketeering indictment. It is pleaded in that place in the indictment that one of the means used to effectuate the conspiracy was attempting to create and creating throughout the industry described in this indictment generally and in the minds of persons engaged therein a feeling of fear and terror for the purpose of preventing persons from resisting the operation of the conspiracy described therein. The same allegation is found in paragraph 19, sub-section (b) of the Sherman Act indictment.

2151

Now, if your Honor please, I will argue that very briefly, if I may. I recall a similar point coming up in the

Manton case, where the question before the Court was the admissibility of evidence having to do with instructions given by one of the conspirators to destroy evidence then being sought by the Grand Jury. It was argued that that could not be within the conspiracy because the conspiracy must have terminated at the time of Manton's resignation. The Court held, as I recall, that one of the objects of the conspiracy was to prevent the operation of the conspiracy from becoming known to the law enforcement authorities, and I suggest by way of analogy here that the assault and the battery on the witness Goddard was for the purpose of keeping him from testifying and in turn keeping him from
2153 resisting, by means of recourse to the law, the operation of the conspiracy charged in these indictments.

The Court: Do I understand that it was made known by Goddard to these two defendants Weinheimer that he was appearing before the Grand Jury?

Mr. Cahill: Yes, your Honor.

The Court: In connection with their case?

Mr. Cahill: If your Honor please, I am giving you the exact quotation.

The Court: Well, I am trying to get your side of it.

Mr. Cahill: I would say, your Honor, that that is an inference that may be drawn from the testimony of this witness, that he was appearing in connection with the proceeding preliminary to the returning of the indictment in this case. As your Honor recalls, of course, this episode
2154 antedates the period of termination.

The Court: Yes, I know.

Mr. Cahill: By many weeks.

The Court: Well, it antedates the filing of the indictment?

Mr. Cahill: Yes, it does, and there is no evidence in this record to date showing an abandonment of the conspiracy, if found, prior to the date of the filing of the indictment.

The Court: Well, that is a question for the jury.

Mr. Cahill: Yes, but there is no evidence in the record to date from which any inference can be drawn.

The Court: Well, do the defendants want to be heard?

Mr. Cahill: I want to argue the second point, if I may, your Honor.

The Court: Yes, go ahead.

Mr. Cahill: The second point is that this evidence is admissible certainly against the defendants Weinheimer, both of them, as conscious evidence of guilt.

The Court: Well, there isn't any doubt about that.

Mr. Cahill: I have decisions here if you want them.

The Court: I am familiar with them. 2156

Mr. Cahill: There are a lot of them in the third circuit on the same point.

The Court: Well, there are two cases that I recall at least that were decided by the Circuit Court, not in this circuit, but there was one in California that went to the Supreme Court; certiorari was denied; the other one—I forget where it was decided, but that also went to the Supreme Court and the certiorari was denied. One was the Smith case.

Mr. Ennis: I think in the Madden case in the Ninth Circuit, certiorari was denied.

The Court: The Smith case was in the Ninth Circuit.

Do any of the defendants' counsel want to be heard?

Mr. Murray: May I ask a question or two, your Honor? 2157

The Court: Yes.

Mr. Murray: Did this incident occur after the Brookline Transportation Company had gone out of business, Mr. Cahill?

Mr. Cahill: I don't have that.

Mr. Murray: After Goddard had returned to Boston?

Mr. Ennis: No. As I understand the story, Mr. Murray, he was in the office up there and he said to Lovell, his boss, in the presence of Edward, "I have got a subpoena.

I have to go down to court." Against that, he was serving papers around that time on Edward and John.

The Court: He was bringing some sort of civil suit.

Mr. Ennis: Yes, he was bringing some sort of civil suit arising out of that strike. It was that strike that put them out of business. So it must have been at least at the time or about the time they were going out of business.

Mr. Murray: Do you know when they did go out of business? Whether before this incident——

Mr. Cahill: As I understand it, this strike is still continuing against them to this very day.

The Court: I think there is some evidence of that.

2159 Mr. Murray: Well, of course if they are not in business, and they are not transacting business in New York, I don't know how the conspiracy can continue——

Mr. Cahill: If I may answer that, your Honor: One of the objects of the conspiracy, and it is so charged, was to put these men out of business. That is charged as being one of the objects of the conspiracy.

Mr. Murray: There is no proof of that.

Mr. Cahill: We submit there is.

Mr. Murray: And as I understand it, Mr. Cahill, this controversy was over the service of process in a civil action?

The Court: No, I don't understand that. My understanding is that there are two divisions of this incident. One is that the witness Goddard made some statement in

2160 connection with his absenting himself from the place of business of his employer to go down before the grand jury; the other is that after he appeared before the grand jury he went to the office of a lawyer to consult that lawyer, I assume, in connection with some proposed litigation concerning himself, and one or both of the Weinheimers; that after he had visited the lawyer's office he went out to serve the papers or to have the papers served in the civil suit, and that in connection with the service of those

papers in the civil lawsuit these threats were made. Am I correct?

Mr. Cahill: That is my understanding, your Honor.

The Court: Did that all happen on the same day?

Mr. Cahill: Yes, your Honor.

Mr. Boudin: If your Honor please, assuming that these matters are part of the conspiracy, and I don't see how they can be, there is still no basis for the admission of this evidence. It seems to me that where a defendant engages in acts which are criminal per se outside of the conspiracy, and therefore tend to prevent somebody by force, violence or otherwise, or bribery, from testifying to them, I should say that there must be some relation 2162
to the conspiracy itself in order that a thing like that may be admissible either on the theory of being part of the conspiracy or on the alleged admissibility of guilt, or rather admission of guilt. It would seem to me it must be the kind of thing which clearly shows its relation to the conspiracy itself in the first instance. Now, here is a case where a man apparently, according to the testimony which has so far now appeared in the record engaged in a lot of violence which was punishable by law irrespective of any conspiracy. The man who was victim of the violence, or one related to it, goes down to a law enforcing agency to complain—

The Court: Well, where is the proof that he went to a law enforcing agency?

Mr. Boudin: A grand jury is a law enforcing agency, 2163
I think.

The Court: I don't take it that he went down to complain; he went down to be a witness because the grand jury directed that a subpoena be served upon him.

Mr. Boudin: But the purpose of the evidence is to show that he attempted to prevent the law being enforced.

The Court: Yes.

Mr. Boudin: That is the purpose of the conspiracy. That is the argument. That is the purpose of the evidence. That is the argument of counsel for the Government. Now I should say that on the face of it it would have no relation to the conspiracy. The man was clearly acting for himself. Now, if it were another one of the defendants that was trying to prevent this man who had a specific complaint against Weinheimer from testifying, it may be argued plausibly that this was part of the conspiracy, since there was no independent crime charged to this particular defendant by this particular complainant, but in this case it is quite clear that Weinheimer or the two Weinheimers
2165 were trying to take care of their own interests, which cannot possibly have related to the conspiracy.

The Court: It seems to me that that goes to the question of weight for the jury.

Mr. Boudin: Before any evidence can be permitted the relation must be clear to the case. Its weight is of an entirely different nature, different problem. Now, certainly you cannot make this particular act a vehicle for proving all kinds of offenses against these defendants, individual defendants, thereby prejudicing everyone else.

The Court: Well, Mr. Boudin, the courts have upheld the reception of admissions of co-conspirators as against the persons who made them. That is before there was established a prima facie case of conspiracy at all.

Mr. Boudin: That is true, your Honor, but that is
2166 only the case when they presumably tended to show the conspiracy, but this is an entirely different problem from the one with which we are confronted in connection with this evidence. The suggestion that this is analogous to the Manton case is clearly unacceptable and not well taken. In that case there was a secret conspiracy, but apparently the testimony was considered admissible on the theory that it was the purpose of the—it must have been the purpose of the conspirators to prevent the con-

spiracy from becoming known, because that would have defeated the conspiracy. There there was a conspiracy to secretly sell justice. Naturally a thing like that, a conspiracy like that, would only be carried out as long as it was kept secret. When it becomes known the purpose of the conspiracy is defeated; its object is defeated. In this case these men never made a secret of their conspiracy; their acts were open. In fact, the indictment so charges. Now therefore, to admit this kind of testimony on the ground that it was apparently an admission of guilt by being an attempt to prevent the act being done is almost I should say absurd.

The Court: Well, I am going to admit the testimony 2168
as against the persons who made the admissions upon the ground that it is an admission by them, and I am going to give the jury an instruction with respect to the circumstances under which it can be considered to be admissible against anybody else, and that is only in the event that the jury are satisfied from the proof, regardless of this proof, that a conspiracy existed and was in existence at that time and that the acts and statements were in furtherance of the conspiracy.

Mr. Boudin: Well, your Honor realizes that counsel for the Government think the other conspirators——

Mr. Cahill: If your Honor please, I would like to take up one other matter.

Mr. Boudin: Is this a ruling that must be excepted to separately or will it be time enough to take our exception 2169
tion——

The Court: You can take your exception when the objection is overruled. This is out of the presence of the jury.

Mr. Cahill: In the absence of the jury, your Honor, I ask counsel for the defendants whether they will stipulate with me as to the fact of the death of Brown, because I don't intend to——

The Court: You can ask them to stipulate, but I want to call your attention to the fact—I have held this myself several times—that it has been held in numerous cases that you haven't any right—of course I assume this will be in the presence of the jury—you haven't any right to ask the defendants to stipulate anything.

Mr. Cahill: All right, your Honor. Then I will prove the fact.

Mr. Boudin: Personally I would waive that right.

Mr. Murray: Your Honor, I think that is a very serious situation, probably not as a matter of record, but only a few short weeks ago the New York papers carried screaming
2171 headlines alleging that Brown had been killed by members of this union.

The Court: No; what they are asking, Mr. Murray, is if you will stipulate that Brown is dead. I am going to tell you what I think; maybe I am wrong; Mr. Cahill will have to speak for himself: I assume that they are laying a foundation to excuse the fact that they are not calling Brown as a witness.

Mr. Cahill: Exactly.

The Court: And it will be necessary for them in order to excuse their failure to call Brown to prove that he is dead. I assume that they will have to go into the question of how he met his death.

Mr. Cahill: That is it exactly.

The Court: I take it that Mr. Cahill is suggesting that,
2172 and if I am wrong about this, why, I want to be corrected because I don't want to mislead anybody—Mr. Cahill is suggesting that the defendants stipulate that Brown is dead so it won't be——

Mr. Boudin: May we stipulate the date of his death?

The Court: —necessary to put in the record the fact that he was allegedly murdered by somebody.

Mr. Cahill: That is it exactly.

The Court: If the defendants stipulate that Brown has died, do you intend to offer any proof as to how he died?

Mr. Cahill: Not if they will so stipulate.

The Court: Well, are you willing to stipulate as to the date of death?

Mr. Cahill: I am perfectly willing to stipulate that.

Mr. Murray: I would first like to know, if your Honor please, whether Brown had been called as a witness before the grand jury.

Mr. Cahill: Well, I will state this for the record: that Brown had been scheduled to be one of the most important witnesses for the Government.

Mr. Murray: I would like to know first whether, if 2174
the Government considers his testimony of such importance, whether or not they ever called him before the grand jury.

Mr. Cahill: That we will not tell you.

The Court: Well, the defendants do not have to stipulate anything if they don't want to.

Mr. Cahill: All right, we will prove it then.

The Court: It seems to me there isn't anything in this case at the present time that would accentuate the minds of the jurors with respect to the alleged circumstances which appeared in the papers as to how Brown died. If it is necessary to prove Brown's death, I suppose that will have to be shown. It will have to be proved that there was an autopsy and I suppose the autopsy would show that he met his death from a bullet, and that might raise 2175
some question in the minds of the jurors. I don't know.

Mr. Murray: Are you calling a witness to show he saw his dead body?

Mr. Cahill: No. We will prove it by the usual method: by a death certificate.

Mr. Murray: That is not the usual method.

Mr. Maguire: In connection with the stipulation, is there any objection to the Court's explaining why such

a stipulation is put in the record? Simply to explain the failure of Mr. Cahill to produce him, and that there is no further significance to it?

Mr. Cahill: I don't object to that.

The Court: That is what I assume.

Mr. Cahill: These gentlemen don't seem to appreciate that I am doing this with the idea of being entirely fair about it.

Mr. Murray: I will ask you to go a little further in view of the publicity attendant upon Brown's death. In view of the fact that the newspapers this morning in their news articles repeated the circumstances of his death, I would like to have your Honor charge the jury that because 2177
Brown is dead, there is no proof here from which they may draw any inference that anyone connected with this case is responsible for his death.

The Court: I think you are opening up a dangerous question there.

Mr. Murray: I don't think so.

The Court: It seems to me that you would meet this situation, and I am merely throwing this out as a disinterested suggestion: It seems to me that you would meet this situation at the conclusion of the testimony of Goddard. Mr. Cahill or whoever is handling that phase of it at that time would say, "We now desire to put a stipulation on the record which the defendants have agreed to for the purpose of indicating that we are not able to produce 2178
Brown as the next witness because he died on such and such a date," and that would be the whole incident with respect to Brown.

Mr. Cahill: Right.

Mr. Murray: If your Honor please, in view of the wide publicity, the accusations that the members of this union are responsible for his murder——

The Court: Well, all right. What would be the difference if no stipulation were made and we take it this way:

When Goddard left the stand the district attorney offered in evidence a certificate of the death of Brown?

Mr. Murray: Well, if your Honor please, there is evidence from the lips of Goddard that Weinheimer made threats from which the jury might gather the impression that Weinheimer was responsible for——

The Court: Well, I think that is a circumstance that can be taken up in the general charge at the end of the case. I don't know what the proof may develop, I don't know what other witnesses will testify, if anything with respect to Brown. I don't feel that the Court ought to be injecting specific charges into the record of the case from time to time, and especially where it is likely to run over a matter 2180
of weeks. What may be said by the Court with regard to the law as affecting the conspiracy has to be said because of the very nature of the conspiracy charged, but I notice that it is becoming a prevalent practice in this court in some of these cases, and particularly in cases where there is conspiracy involved, that every once in a while some fellow wants to have a charge, and if you follow all the requests of counsel, you would have more charges throughout the trial than the sum total of the whole charge at the end of the trial would amount to.

Mr. Murray: True, your Honor, but the reason I ask your Honor to particularize in this instance is——

The Court: Well, I don't see the necessity for it. If there is nothing more put on the record than the fact that Brown is dead, and it appears that the reason for that is that it 2181
is to excuse the failure to call him as a witness. Now, there isn't any intimation that this Brown was the Brown who was shot up on Riverside Drive at all, if he was shot up there.

Mr. Boudin: I was trying to argue for a stipulation, Mr. Murray. I didn't want the jury to get the notion that he died as the result of a beating. It is two years.

The Court: I think if there is any stipulation as to the man's death the time ought to be stated, when he died.

Mr. Murray: Yes.

Mr. Cahill: Yes.

The Court: It might appear that he died from a beating he got, if he got one, at the time, if the testimony so indicates that somebody beat him.

Mr. Boudin: That is what I said. Two years.

Mr. Cahill: Well, I am perfectly glad to stipulate.

The Court: Well, how will we handle it? That is the question.

Mr. Maguire: I suggest that Mr. Cahill state the stipulation as your Honor has outlined.

2183

Mr. Cahill: March 22nd? Isn't that the correct date? We will check it. I am pretty sure I am right on that.

The Court: Is that agreeable to you, Mr. Murray?

Mr. Murray: Yes, it is, Judge, except I would still like to urge this: I think in view of this witness Goddard's testimony, perhaps your Honor could reserve that for your charge. There is no evidence that Weinheimer is responsible for his death. In your charge to the jury you may so instruct them.

The Court: Well, you will be at liberty to offer a request at the conclusion of the trial to cover that in any way you want, and if I don't charge it you will have the benefit of the failure to charge it.

(The court and counsel returned to the courtroom.)

2184 (The jury entered the courtroom.)

The Court: The clerk reports that all of the defendants are present.

RUSSEL B. GODDARD, resumed the stand.

The Court: What was the last question?
(Last question read.)
The Court: All right, put your next question.

Direct examination (continued) by Mr. Ennis.

Q. Mr. Goddard, were you served with a grand jury subpoena to appear before the grand jury in this building at any time in 1938? A. Yes, sir.

Q. Can you remember the month? I think it was March.

Q. Did you make several appearances in this building for that purpose? A. Yes. 2186

Q. Do you recall one such occasion, a day upon which you were accompanied by Mr. Klein? A. Yes, sir.

Q. Was Mr. Klein with you in this building? A. No, sir.

Q. Did you meet Mr. Klein after you left this building? A. Yes, sir.

Q. When you came to this building in answer to that subpoena, did you discuss the subpoena? Did you say anything about it before you came here in the presence of Edward Weinheimer, the defendant?

Mr. Maguire: Objected to.
The Court: Objection overruled.
Mr. Maguire: Exception.
The Court: He may say yes or no. 2187

A. Yes.

By the Court.

Q. Where was that conversation? A. In the office of the Brookline Trucking Company, sir.

Q. And who was present? A. My assistant——

Q. Name? A. Arthur Feldman.
Q. Who else? A. Weinheimer.
Q. Which Weinheimer? A. Edward Weinheimer.
Q. Who else? A. Mr. Lovell.

By Mr. Ennis.

Q. What was said in that conversation?

Mr. Boudin: Objected to.

Mr. Murray: I object, if your Honor please, on the ground that it is immaterial, irrelevant, outside the issues and calling for testimony that is
2189 prejudicial.

The Court: I will take the testimony as against the defendant Edward Weinheimer if it discloses anything he said or anything he did material to the issues in this case; and I will say now to the jury in that connection, as I have indicated before, it is for them upon the facts in this case to determine whether there was a conspiracy involving any of the defendants in this case. If you find there was a conspiracy it will be for you to determine when the conspiracy began and when the conspiracy ended and what defendants were in the conspiracy at the time that it ended. It will be for you to say, whether the conspiracy was in effect, if you find
2190 there was one, on the date of the conversation which the witness has been called upon to relate; and it will be for you to determine whether if you find there was a conspiracy in existence at that time, anything which may have been said by the defendant Weinheimer was in furtherance of that conspiracy. Otherwise the testimony may be received and considered only by you as an admission of Weinheimer against himself and himself alone.

Mr. Murray: The defendants respectfully except to your Honor's ruling and instructions on the law.

The Court: Well, if there is any instruction I have omitted which counsel for the defendants feel should be supplemented, I will give them an opportunity to submit any supplemental suggested charge.

Mr. Murray: If your Honor please, the basis of my objection is not because your Honor's charge is not precise, but because the defendants' contentions are that testimony as to these isolated acts is inadmissible.

The Court: Very well.

Mr. Duff: Will your Honor note for the record the objection of the defendant Cornelius Noonan as well? 2192

The Court: On the same grounds or other grounds?

Mr. Duff: On the same grounds as set forth by Mr. Murray.

The Court: So noted. And the exception will inure to the benefit as well of any other defendant.

Mr. Boudin: I take it all the other defendants have exceptions?

The Court: Yes.

By Mr. Ennis.

Q. Mr. Goddard, will you state as well as you remember the time of this conversation in your office at Brookline? 2193
A. I believe it was the afternoon of the day that I got the subpoena from the United States Marshal in this building.

Q. What month was that? A. I am pretty sure it was March; I am not certain.

The Court: What year?

The Witness: 1938, sir.

Q. What was said at that conversation?

Mr. Murray: I object to it, if your Honor please. Perhaps your Honor could note an objection and exception to this line without——

The Court: Well, the objection heretofore made will stand, and the objection will continue to this question with the same force and effect as if it were at length reiterated. The same ruling and exception to all of the defendants.

Mr. Murray: Without the necessity of constantly interposing objections and exceptions?

The Court: Yes.

2195

Mr. Boudin: In other words, as I understand it, the objections and exceptions to this line of testimony——

The Court: That is the idea.

Q. Will you state, Mr. Goddard, what was said in that conversation? A. I believe I said that I had to make an appearance in the Federal Building in regard to the investigation.

Mr. Murray: I move to strike out the answer, if your Honor please, as too indefinite and speculative.

The Court: Denied.

Mr. Murray. Exception.

2196

Q. Was anything else said? A. That is all, sir.

Q. Did you state what investigation? A. I don't believe so.

Q. Did anyone else say anything? A. No, sir.

The Court: Did Weinheimer say anything?

The Witness: No, sir.

Q. Did you again see Weinheimer that same day? A. No, sir.

Q. Did you again shortly thereafter——

The Court: Well, when did you next see him, if at all.

The Witness: I believe it was the following day, sir.

Q. The following day? A. Yes.

Q. Who was present at that time? A. Weinheimer and his brother John, Morton, Joe Gillan, and perhaps a couple of others.

Q. Was anyone with you? A. Yes, sir. 2198

Q. Who was with you? A. Harris Klein.

Q. Were Morton and Gillan drivers for Brookline? A. Yes, sir.

Q. Were these persons you have mentioned the only persons present? A. No, sir; there were some others, but I did not know them.

Q. How many were there about altogether? A. About six, I guess.

Q. Where was this meeting? A. On 20th Street near Tenth Avenue.

Q. What was said at that meeting in the presence of the defendants Edward and John Weinheimer? A. Harris Klein said to the drivers of the Brookline Trucking Company, "I am here to make service upon you of these sum- 2199 monses."

Mr. Maguire: May we ask that the witness speak louder?

The Court: Yes. You will have to speak louder. I can hardly hear what you say myself.

A. (Continued) He said, "I am here to make service upon you of these three summonses."

Q. Then what was said? A. Weinheimer said to Klein—

Q. Which Weinheimer? A. Edward Weinheimer.

Q. Yes? A. That he had better keep his nose out of his business.

Q. Then what was said? A. John Weinheimer told me to keep my mouth shut "Or this is what you'll get."

Q. Then what was done? A. I turned around and walked away from them to go across the street into the office, and John Weinheimer assaulted me.

Q. What did he do? A. He hit me several times on the back of the head, knocked me down; kicked me a couple of times.

2201 Q. Where did you fall? A. I fell between two automobiles.

Q. On the street? A. Yes.

Q. On your face? A. Yes.

Q. Was there any blood on you? A. My—face was scratched. My face hit a bumperette that was on a bumper as I fell forward.

Q. And scraped your face? A. Yes.

Q. After you had fallen on the street were you struck again? A. No, sir.

Q. Did Weinheimer only hit you with his hands? A. Yes, sir.

Q. I thought you stated that you were kicked a couple of times. A. That was while I was lying there on the street.

2202 Q. While you were lying on the street John Weinheimer kicked you? A. Yes.

Q. Was there anything further said in that conversation? A. No, sir.

Q. Mr. Goddard, as I recall, you testified yesterday that you communicated with the defendants Furey and Campbell at union headquarters on some occasion during this period. A. Yes, sir?

Q. Did you ever communicate with them about your trucking operations at any other place? A. Yes, sir.

Q. What was that place? A. At both addresses that Brookline Trucking Company had.

Q. Any other place? A. No, sir.

Q. You did not communicate with them; you did not talk to them face to face or telephone them at any place other than union headquarters? A. No, sir.

Q. Do you recall any conversation with the defendant Edward Weinheimer in which you discussed getting in touch with Furey and Campbell at some place other than the union headquarters?

2204

Mr. Boudin: Objected to.

The Court: Let me hear that question.

(Question read.)

The Court: Yes or no?

The Witness: No, sir.

Q. Mr. Goddard, I understood you to testify that with relation to conditions at Brookline you had frequent occasions to get in touch with the delegates Furey and Campbell? A. Yes?

Q. Now, will you recall in your mind those incidents and tell me whether you can remember no occasion in which you communicated with them at any other place than union headquarters or the two offices of Brookline? A. Weinheimer has said to me on many occasions——

2205

Mr. Murray: I object and move to strike it out as not responsive.

The Court: Sustained.

You were not asked for a conversation with Weinheimer.

Mr. Ennis: May the question be repeated, your Honor?

The Court: Yes, repeat the question.

(Question read.)

The Court: The question is whether you communicated with Furey or Campbell at any place other than the three places you have already mentioned.

The Witness: No, sir.

Q. Mr. Goddard, did you ever hear of a place called the Pump? A. Yes, sir.

Mr. Boudin: Objected to.

The Court: I will allow that. I have heard of it. I remember a famous man had his headquarters there.

2207

The Witness: Yes, sir.

Q. Did you ever communicate about your Brookline Trucking Company operations with Campbell and Furey at that place?

Mr. Murray: I object to it.

Mr. Boudin: I object to it.

The Court: Sustained.

Q. Now will you tell us, Mr. Goddard, whether you communicated with the defendants Campbell and Furey about Brookline matters at any place other than your offices or union headquarters?

2208

Mr. Murray: I object on the ground that it has been already answered, if your Honor please.

The Court: It has been.

Q. Did you ever have any conversation with Ed Weinheimer about the Pump? A. Yes, sir.

Q. Will you state that conversation?

The Court: When was it and where was it?

Q. Can you state where it was, Mr. Goddard? A. No, sir.

The Court: Can you state when you had such a conversation?

The Witness: I cannot place the time, your Honor; some time between September and March.

Q. September of what year? A. 1937.

Q. Well, would you say that it was nearer to September than to the following March? A. I don't know.

Q. About the place of it—could you say whether or not it was in New York City? A. Yes, sir.

Q. It was in New York City? A. Yes, sir. 2210

Q. And during that period? A. Yes, sir.

Q. What was that conversation?

Mr. Boudin: Objected to.

The Court: On what ground?

Mr. Boudin: On the ground that it has no relevancy to the issues.

The Court: Overruled.

Mr. Boudin: Exception.

Mr. Murray: If your Honor please, I object on the ground that the time has not been fixed.

The Court: Sustained.

Q. Mr. Goddard, can you place the——

2211

The Court: Who were present at the conversation besides Weinheimer and yourself?

The Witness: That is all, sir.

Q. Do you recall whether or not it was during the daytime or the night time? A. I should say it took place during the daytime.

By the Court.

Q. Well, is there any doubt about it? A. Only that the majority of our conversations——

Q. No, never mind about the majority of your conversations. I am asking you if there is any doubt in your mind whether this particular conversation about the Pump took place in the daytime or the nighttime? A. It is very difficult to answer that, your Honor.

By Mr. Ennis.

2213 Q. Mr. Goddard, when you wished to reach Campbell and Furey about Brookline matters did you ever go to the Pump? A. Yes, sir.

Q. Whom did you speak to there? A. Austin Furey.

Q. Do you recall any one such occasion?

The Court: Well, one moment. Is there any mystery about it? Where is this Pump?

Q. Where is the Pump? A. On Eleventh Avenue.

By the Court.

Q. And where? That is a long street. Whereabouts on Eleventh Avenue? A. In the vicinity of 23rd and 25th Street, somewhere along that block.

2214 Q. You are not referring to the Pump on Eighth Avenue? A. No, sir.

By Mr. Ennis.

Q. What is this Pump? A. It is a restaurant where they sell food; bar separated by a partition.

Q. A bar where they sell drinks? A. Yes, sir.

By the Court.

Q. Did you ever see any one of the defendants in this case in the Pump? A. Furey only.

Q. And when did you see him there? A. I would say it was some time in November, 1937.

By Mr. Ennis.

Q. Did you at that time discuss with Furey your operations, your Brookline operations? A. Yes, sir.

Q. Can you remember that conversation? A. No, sir.

Q. Did you have any conversation with Weinheimer concerning that meeting with Furey? A. Yes, sir. 2216

Q. Can you state when that conversation was? A. The same day.

Q. The same day? A. Yes.

Q. In November, 1937? A. Yes.

Q. Can you state where that conversation was? A. No, sir.

Q. Was it in New York City? A. Yes, sir.

Q. What was said in that conversation?

Mr. Murray: If your Honor please, might I have the time fixed more definitely?

By the Court.

Q. Was this conversation with Weinheimer before or after the conversation you had with Furey? A. Before, your Honor. 2217

Q. On the same day? A. Yes.

By Mr. Ennis.

Q. What was said?

By the Court.

Q. Now you don't remember where you had the conversation with Weinheimer? A. Not truthfully, no.

The Court: All right, objection overruled.

By Mr. Ennis.

Q. What was said? A. I asked Weinheimer where I could possibly find either one of the delegates, and he said, "You will find them in the Pump; that is where the regular guys hang out."

2219 Q. Did he say anything else? A. Not that I recall.

Mr. Cahill: May we have a moment, if your Honor please?

The Court: Yes.

Q. Was anything said in that conversation with Weinheimer about who owned the Pump?

Mr. Murray: I object to that on the ground that it is leading.

The Court: I will sustain the objection.

Q. Do you recall anything else that was said at that conversation with Weinheimer?

Mr. Boudin: That question calls for yes or no.

2220 The Court: Yes, answer yes or no.

A. (Witness shakes head.)

Q. Nothing else? A. No.

The Court: When you shake your head I can't tell whether the stenographer sees that or not. His eyes are on the book.

The Witness: I am sorry.

Q. Was anything said in that conversation about Campbell as well as Furey with regard to the Pump?

The Court: Yes or no.

A. No.

Q. Do you recall whether in that conversation you discussed any particular Brookline Company matter? A. I discussed some business with Furey at the time, but what the matter was now, I don't recall.

Q. Well, in this conversation with Weinheimer before you saw Furey at the Pump that day did you discuss with Weinheimer any Brookline matter? A. Not that I remember. 2222

Q. Did you say anything to Weinheimer about the proprietorship of the Pump?

Mr. Murray: I object on the ground that it is irrelevant and immaterial, if your Honor please.

The Court: Sustained.

Mr. Boudin: I object.

The Court: I have ruled. Sustained.

Mr. Ennis: May I have this marked for identification?

The Court: Yes.

(Marked Government's Exhibit 13 for Identification.)

2223

Q. Mr. Goddard, I request you to examine Government's Exhibit 13 for Identification and see if that refreshes your recollection about the conversation with Edward Weinheimer.

By the Court.

Q. Have you looked at Exhibit 13 for Identification? A. Yes.

Q. And after having looked at it can you state whether it refreshes your recollection or not? A. Yes, sir.

Q. Does it refresh your recollection? A. That is right, yes, sir.

Mr. Murray: Your Honor, might I ask the privilege of looking at this exhibit, because I anticipate the questions that are about to be asked, and I anticipate that it has to do with matters that your Honor has ruled out as irrelevant.

The Court: Not at this moment unless counsel desires to show it to you.

Mr. Ennis: I think, your Honor, I should finish
2225 my examination.

The Court: Proceed.

Q. Mr. Goddard, with your recollection refreshed can you recall anything else that was said at that conversation with Ed Weinheimer?

The Court: Where is the statement? Where is the exhibit?

Mr. Ennis: It is right before him.

The Court: He cannot look at it. His recollection was refreshed. He is to testify from his recollection and not from the paper.

Mr. Ennis: I did not mean him to testify from the paper, your Honor.

2226 The Court: I am here to try to see that the trial is impartial.

Mr. Ennis: Yes.

The Court: Proceed.

The Witness: Question, please?

(Question read.)

Mr. Cahill: If your Honor please, I trust that there is no implication in your Honor's statement

that the United States Attorney is here for any other purpose than to see that the trial is impartially conducted?

The Court: Certainly not. But there is an implication, when the paper is before the witness, that he may be looking at the paper and not testifying from his recollection solely as refreshed.

A. He said that Austy and Willie owned the Pump——

Mr. Murray: I object, if your Honor please, on the ground that the conversation has not been asked for.

The Court: Strike out the answer. 2228

With your recollection refreshed by reference to Government's Exhibit 13 for Identification, are you now able to give any conversation that you had with Weinheimer on the date that you had the conversation with Furey at the Pump? Just answer yes or no.

The Witness: Yes.

The Court: Now put your next question.

Q. What was that conversation?

Mr. Maguire: Objected to.

The Court: Overruled.

Mr. Maguire: Exception. 2229

A. He said that Austy and Willie owned the Pump. If I wanted them bad enough I could probably——

Mr. Boudin: I move to strike out the answer.

Mr. Murray: He has not finished.

The Court: Let him finish his answer.

Q. Will you continue your answer? A. He said that Austy and Willie owned the Pump. If I wanted them bad enough I could probably find them there; that was where the regular guys hung out; you had to spend a few dollars in his business. He also asked me if there was any truth——

Mr. Boudin: If your Honor please, I thought that the witness stopped.

The Court: He is testifying to the conversation that he says he had.

Mr. Boudin: All right.

The Court: Proceed.

2231

A. (Continued) He also asked me if there was any truth to the story that Mr. Lovell had offered Austy and Willie a certain sum of money to get rid of him, and I told him no, that I had no such knowledge.

Mr. Boudin: Is that the end of that?

Q. Do you recall anything else in that conversation?

The Court: Just a moment.

Mr. Boudin: If your Honor please, I move to strike out the answer as already given.

The Court: Denied.

Mr. Boudin: Exception.

2232

A. No, sir.

Q. Mr. Goddard, during this period of your relations with the defendant Edward Weinheimer, did you ever have any discussion with him about the relationship between Local 807 and your business and any law enforcement agencies? A. Yes, sir.

Q. Can you place the time and the place of that conversation or of one of such conversations? A. I would say it was some time in the early part of April, 1938.

Q. Where was it held? A. In our office in 20th Street.

Q. What was that conversation?

Mr. Boudin: Objected to.

The Court: Overruled.

Mr. Boudin: Exception.

A. He said, "I understand Uncle Sam has swooped down on Local 807 and grabbed all the records. I hope they have a good time with them. There is nothing they can do. Local 807 has got the biggest membership of any union of its type in the country; they have got plenty of money; we could tip almost every truck over in New York City in 48 hours and show them the greatest mass demonstration of unionism that has ever been shown anywhere in this country." 2234

Mr. Boudin: If your Honor please, I move to strike out the answer.

The Court: Denied.

Mr. Boudin: Exception.

Q. Mr. Goddard, you testified yesterday to an incident of a strike about some overtime that Edward Weinheimer claimed; do you recall that? A. I think so.

Q. And do you recall stating that you telephoned to union headquarters about it? A. Yes, sir. 2235

Q. And to whom did you speak to?

Mr. Murray: I object, if your Honor please, on the ground that it was already answered yesterday.

The Court: I think we went into it yesterday.

Mr. Ennis: I have a further reason, if I might explain to you.

The Court: Well, don't repeat what was said yesterday.

Mr. Ennis: Well, I don't mean to repeat it, except that the repetition of one question is necessary for the foundation of new matter.

The Court: You may ask him what further conversation he may have had.

Q. Do you know with whom you spoke? A. Yes, sir.

Q. Who was that? A. Mr. Devery.

Q. What was his position in the union at that time? A. President of Local 807.

2237 Q. Will you stand and look around this courtroom and identify Mr. Devery if he is present. A. (Standing) That gentleman in the front seat with the glasses (indicating).

Q. What one is he from the end? A. Third.

Q. Third from the end, did you say? A. Yes.

The Court: Well, is there any doubt about the person whom he identified?

Mr. Murray: No.

Mr. Boudin: No, never was, and, if your Honor please, I respectfully object to these dramatics.

The Court: Just a moment. There are no dramatics here and there are going to be no dramatics here.

Mr. Boudin: That is exactly the point. Yesterday

2238 we——

The Court: No further discussion on that point.

Mr. Boudin: I should like to make my objection on the record.

The Court: To what?

Mr. Boudin: To what has just occurred.

The Court: No, there is nothing before the Court. The question was asked and answered. I asked if there was any doubt about the identification of the

person whom the witness was asked about, and I understood that all counsel said no. That disposes of that matter.

Mr. Boudin: I respectfully except to your Honor's not permitting me to put my statement down on record and the ground for my objection.

The Court: Your objection to what?

Mr. Boudin: My objection to your Honor's question as to what has occurred.

The Court: Do you object to my question that the other counsel have answered?

Mr. Boudin: I have answered "No" also, but my objection was to the dramatics.

2240

The Court: You mean that I was dramatic about it?

Mr. Boudin: No, the government is apparently staging dramatics and your Honor permitted it.

The Court: As far as I am concerned the incident is closed.

Mr. Boudin: Exception.

The Court: Proceed.

Mr. Ennis: That is all of the direct examination.

The Court: Cross-examine.

Cross-examination by Mr. Murray.

Q. What is your present occupation? A. Traffic manager.

2241

Q. For whom? A. Holland Transportation Company.

Q. And where is the Holland Transportation Company located? A. 424 East 23rd Street, New York City.

Q. How long have you been connected with that firm? A. Since February 1, 1939, sir.

Q. When did you first talk to the defendant Weinheimer about the employment by the Brookline Transportation Company? A. I believe, sir, it was some time in September or the early part of October, 1937.

Q. Did he come to you with a telegram and show it to you and say that he had received it from Mr. Lovell? A. I testified to that yesterday.

Q. I don't care what you testified to yesterday.

Mr. Cahill: I ask that counsel do not argue with the witness.

A. I am sorry.

The Court: I will handle the situation.

Mr. Murray: I ask that that remark of the witness be stricken out.

2243

The Court: Strike it out. Strike out all the remarks.

Q. Did Weinheimer come to you and show you a telegram that he said he received from Mr. Lovell? A. Yes.

Q. What was Mr. Lovell's initials? A. F. K.

Q. And do you know when that was? A. I sent it, but I don't remember when it was, sir.

Q. You sent it? A. Yes, sir. I thought it was some time in September or the early part of October.

Q. I show you this paper. Is that the telegram you sent (handing to w 'ness)? A. Yes, sir.

Q. And you signed Mr. Lovell's name to it? A. His signature was signed to every telegram, sir.

2244

Mr. Murray: May I have the answer stricken out, if your Honor please.

The Court: Strike it out. Yes or no.

The Witness: Yes.

The Court: We are not inquiring about any other telegram than the one counsel showed you.

Mr. Murray: I offer it in evidence.

The Court: Show it to the United States Attorney.

Mr. Cahill: No objection.

(Marked Defendants' Exhibit C.)

The Court: What is the date of the telegram?

The Witness: October 18, 1937.

The Court: Read it to the jury.

(Mr. Murray read Exhibit C to the jury.)

Q. Did Mr. Lovell instruct you to send that telegram to Mr. Weinheimer? A. Yes, sir.

Q. And at the time Lovell did that was Lovell in New York or Boston? A. Lovell was in New York, sir.

Q. And had you had a conversation with Lovell about the employment of Weinheimer? A. No, sir. 2246

Q. Did the suggestion originate with Lovell to employ Weinheimer? A. Yes, sir.

Q. And when did you have a talk with Mr. Lovell about sending this telegram to Weinheimer? A. On October 18th, sir.

Q. Is that the first time you had ever seen Weinheimer? A. Yes, sir.

Q. Had he ever worked, to your knowledge, for the Brookline Company before that time? A. No, sir.

Q. Now, let me take you back to your testimony of this morning: You testified here a few moments ago, didn't you, that you had a conversation in September of 1937 with Weinheimer about the Pump and its ownership? A. I thought I said November. 2247

Mr. Cahill: If your Honor please, I don't know whether your Honor wishes me to raise the point, but I regard that as misleading.

The Court: The witness seems to be able to take care of himself from what he has already attempted to say. Read me so much of his answer as was given.

(Answer read.)

The Court: Is that your answer?

The Witness: Yes.

Q. Do you know now whether when you first discussed the Pump with the District Attorney, or at least when you were first questioned, whether or not you said that the conversation with Weinheimer concerning the Pump was had in September of 1937? A. No, sir.

Q. Do you say now that it was in November?

Mr. Cahill: If your Honor please, I object to the form of the question. The use of the word "now." There is no proof in the record justifying that.

2249

The Court: Yes. I sustain the objection, because I have a recollection of what he said.

Q. Do you say it was in November?

Mr. Cahill: Objected to as repetitious.

The Court: He may answer.

A. If it please your Honor, there aren't any of these dates——

The Court: The question is a very simple one: you can answer it yes or no. Just listen to the question.

2250

Q. (Read.) A. I believe it was.

Q. Now, bearing in mind the date of this telegram of October 18th, when was it in November that you had the talk with Weinheimer concerning the Pump? A. I have no idea.

Q. Was it the first part of November? A. I have no idea, Mr. Murray.

Q. Did you make a note of the conversation? A. No, sir.

Q. Now, if it were in November it would be approximately about a month after Weinheimer had been employed by the Brookline, wasn't it? A. Yes.

Q. At that time was the relation between you and Weinheimer friendly? A. Not particularly, no, sir.

Q. Had there been any controversy between you and him, say up to the middle of November? A. Do you mean personal controversy, sir?

Q. Only between him and you I am directing my attention to. A. Almost any controversy that I had with him was due to the business of Brookline Trucking Company. 2252

Q. I am addressing my remarks to any differences or controversy that ensued after Weinheimer's employment between you and him.

Mr. Cahill: And I submit it has been answered, your Honor.

The Court: And I submit that is not a question. I submit that is a statement by counsel.

Mr. Murray: May I have the witness' answer stricken out, if your Honor please, and the question repeated?

Mr. Cahill: I submit it is responsive.

The Court: Denied. Put your next question.

Q. Now, when was it that you had a discussion with 2253
Weinheimer about the employment of someone named "Yellow"? A. Some time between October and March.

Q. Of what year? A. October of 1937, and March of 1938, sir.

Q. Can you fix the time any more definitely? A. No, sir, I cannot.

Q. When did you have this conversation that you testified to yesterday with Weinheimer concerning the em-

ployment of his brother? A. Shortly after he came to work for Brookline.

Q. Can you approximate the time? A. No, sir.

Q. Now, did you tell Weinheimer at that time that you were anxious that only union employees connected with 807 be engaged by the Brookline Transportation Company? A. I don't remember telling him that, sir.

Q. Well, were you anxious that no one be employed by your concern except the members of Local 807?

Mr. Cahill: I object to the form of the question, the use of the word "anxious."

2255 The Court: I will allow that.

A. No, sir.

Q. Well, did you say to Weinheimer in the conversation concerning the tentative employment of Yellow or Weinheimer's brother that they were not members of the union? A. He told me they were not members of the union.

Q. Well, when he told you they were not members of the union, what did you say? A. It didn't make any difference to me, sir.

Q. None at all? A. No. Anything to keep peace in the family.

Mr. Murray: I move to strike out that remark.

2256 Mr. Cahill: If your Honor please, when counsel repeatedly——

The Court: No, I will let it stand.

Q. Now, you testified yesterday that preliminary to the engaging of Weinheimer that he told you that he would work for $40 a week; was that your testimony yesterday? A. I thought I said $42, sir.

Q. $42 a week? A. Yes, sir.

Q. Now, at that time did you know whether or not there was a contract between Local 807 and Brookline Company? A. Yes, sir.

Q. Were you aware at that time that that contract provided that employees of Local 807 should be paid a certain wage for their work? A. Absolutely.

Q. And what was the wage? A. $56.50, if I remember right.

Q. Did you know that that was in the contract? A. Yes, sir.

Q. Did you know also at that time that the contract provided for certain hours of employment? A. Yes, sir.

Q. What were they? A. Eight hours a day. 2258

Q. Now, was Weinheimer appointed what is called shop steward? A. Yes, sir.

Q. Did you know whether or not in that contract signed with Local 807 that there was a provision providing for the appointment of shop stewards? A. Yes, sir.

Q. Did you know what the shop steward's duties were? A. Yes, sir.

Q. What were they? A. He is responsible for the maintenance of union conditions for himself and his men on the job on which he works.

Q. Yes? And did you understand that those provisions had something to do with the shop steward's privilege to recommend who should be employed on the job?

Mr. Cahill: I object to that, your Honor. There is no proof in the record of that, and I think the contract is the best evidence. 2259

The Court: Sustained.

Q. Well, did you have any discussion with Weinheimer as to whether or not his position as shop steward entitled him to suggest to you what employee should be hired? A. No, sir.

Q. Did you ever have any such talk with him at any time? A. It is possible but I don't recall it, sir.

Q. Well, did you have any talk with him as to whether under the contract if any differences arose that the delegate of the union should be consulted about them? A. Yes, sir.

Q. When did you have that talk with him? A. Many times.

Q. Did you have it in October, 1937? A. Perhaps, sir.

Q. Did you have it in November of 1937? A. I can't place any time, Mr. Murray. It is utterly impossible for me to place time.

2261 Q. Well, are you in a mental state— A. I don't think so.

Q. —where you say it is utterly impossible to place time as to any event which you testified to here? A. I don't think so.

Mr. Cahill: I object to that, your Honor.

The Court: I will sustain the objection to the question.

Q. But you say it is utterly impossible to fix the time? A. Mr. Murray, three years have gone by.

Q. Did you ever make any notes of those conversations that you testified to and detailed to this jury with Weinheimer? A. No, sir.

2262 Q. Did you ever make any memorandum as to the conversations or, rather, as to the time you had conversations with Furey and Austin? A. No, sir.

Q. Are you able to place the time? A. No.

Q. Are you able to place the month? A. No, sir.

Q. Or the year? A. Yes, the year definitely.

Q. And what is the year? A. 1937, 1938; September to March while I was in the employ of Brookline Trucking Company.

Q. Is that the best you can tell so far as fixing the time of conversation with either Furey or Campbell? A. Yes, sir.

Q. Or Weinheimer? A. Yes, sir.

Q. Or Mr. Devery, the president of the union? A. My conversations with Mr. Devery were strictly on the telephone; many times.

Mr. Murray: May I have the answer stricken out as not responsive?

The Court: Strike it out.

Mr. Murray: May I have the question repeated?

The Court: Yes, read the question. 2264

Q (Read.) A. Yes, sir.

Q. Did you ever write any letters to anyone that would help you to refresh your recollection as to the time of these conversations with Weinheimer, his brother, Mr. Devery, Mr. Austin or Mr. Furey? A. I may have; I don't recall any such letters.

Mr. Cahill: In order that the record be straight, I think counsel is making an error in the questions. It is not "Mr. Austin and Mr. Furey." It is Mr. Austin Furey and William Campbell. Let us keep the record straight.

Q. You say that you may have? A. Yes. 2265

Q But you don't know? A. No.

Q. Well, doesn't your recollection serve you to say whether or not you did write such a letter? A. No.

Q. Did you ever write a letter to the president of Local 807? A. Not that I recall, sir.

Q. Did you ever write a letter to either Campbell or Furey, the delegates? A. I have written hundreds of letters, Mr. Murray. I don't remember any to these particular people.

Q. Did you write hundreds of letters in relation to any differences you had with any employees? A. No, sir.

Q. Well, let me finally ask you, did you ever write a letter—. A. I don't remember.

Q. Wait. (Continuing) —containing any memorandum concerning any differences you had with the employees of the Brookline Transportation Company? A. I may have, sir.; I don't remember.

Q. Is that the best answer you can make? A. Yes.

Q. Did you have any talk with Weinheimer in October of 1937 or November, 1937, concerning the wages that your concern was to pay to the members of Local 807 who were
2267 employed by it? A. Yes, sir.

Q. And did that conversation result in a controversy between Weinheimer and you concerning wages? A. No.

Q. Well, you testified here yesterday that Mr. Weinheimer agreed to go to work for $42 a week; is that correct? A. Yes.

Q. And then when he had worked a week and his wages were due, that he demanded the wages that were to be paid to him under the contract, or allotted to be paid under the contract to him; is that right? A. Yes, sir.

Q. Was that the first difference between you and Weinheimer? A. We had no difference.

Q. Beg pardon? A. We had no difference.

Q. Everything was perfectly calm between the two of you, was it? A. I had no difference with him on account
2268 of that which was coming to him. Mr. Lovell and he had a difference.

Q. Well, wasn't the discussion concerning the payment to Weinheimer of union wages as provided for by the contract between you and Weinheimer? A. Yes, sir.

Q. Did Weinheimer ever talk to Lovell about the question of paying union wages under the contract? A. Yes.

Q. When? A. His first pay day.

Q. That was when? A. Some time in October.

Q. Having in mind that the telegram that has been offered in evidence, Defendants' Exhibit C, bears the date of October 18—can you tell us when that discussion took place concerning the wages that were to be paid to Weinheimer as a union member? A. At his first pay day, sir.

Q. That would be about October 25, would it? A. Something like that.

Mr. Murray: Your Honor, I think I will have to remind you that it is a quarter of twelve. Shall I go on?

The Court: No, we will suspend now. I was waiting for a good place to stop.

(Short recess.) 2270

Q. Do you know where at this time the contract that was signed between Local 807 and the Brookline is? A. Yes, sir.

Q. Where? A. The District Attorney has it.

Mr. Murray: May I have it, Mr. Cahill?

Mr. Cahill: Yes, sure.

Mr. Ennis: If you proceed I will find it.

Q. Now, about October 25th, the week after Weinheimer went to work, there was a discussion about the wages that he was to be paid? A. Yes, sir.

Q. Do you recollect who else went to work with Weinheimer about October 18th? 2271

(Mr. Ennis hands paper to Mr. Murray.)

A. Yes, sir.

Q. Who? A. John Morton.

Q. Anyone else? A. Frank De Canto, William Graham. I believe that is all.

Q. There were about four or five? A. I think so.

Q. Weren't there? A. Yes, sir.

Q. Will you look at this paper and tell me whether or not you recognize this signature on it? A. Yes, sir.

Q. Is this the contract signed between Local 807 and the Brookline? A. Yes, sir.

Mr. Murray: I offer it in evidence.

Mr. Cahill: No objection.

(Marked Defendants' Exhibit D.)

Mr. Murray: May I, with your Honor's permission, call the jury's attention to some features of it?

The Court: Yes. Any matter that you don't
2273 call the jury's attention to, if the District Attorney desires to call their attention to it, he may.

Mr. Murray: Well, in substance, ladies and gentlemen, this is a contract signed and executed between International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers of America, truck drivers and helpers, Local Union No. 807, and Brookline Trucking Company, signed by F. K. Lovell, treasurer. I want to call your attention to some of the salient features in the contract. There is a scale of wages fixed in this contract between Brookline and the union as follows: Four-horse truck drivers, salary $48 per week, overtime $1.50 per hour; three-horse truck drivers $46, overtime
2274 per hour $1.44. I will leave out the horse-driven vehicles because apparently they do not apply here. Then there is third axle truck chauffeurs, salary per week $56.50, overtime $1.77 per hour; tractor-trailer chauffeurs, $56.50, overtime per hour $1.77; 7½-ton chauffeurs, salary per week $50.50, overtime per hour $1.58; 5-ton automobile chauffeurs, salary per week $48, overtime per hour $1.50; 4-ton automobile chauffeurs $47 per week; $1.47 per hour

overtime; 3-ton automobile chauffeurs, $46 salary per week, overtime per hour $1.44; 2-ton automobile chauffeurs, salary per week $45, overtime per hour $1.44; 1-ton automobile chauffeurs, salary per week $44, overtime per hour $1.37.

Then Section 2 of this contract: Eight hours to constitute a day's work from Monday to Friday, inclusive; seven hours to constitute a day's work on Saturday. Time to be taken when arriving at stable or garage at A. M. and leaving same P. M.

Section 6: The local union will appoint one of its members to act as job steward whose duty it shall be to see that the conditions of this contract 2276
are not broken by either employer or employee and in case of a slack season he shall be the last chauffeur to be laid off and under no consideration shall he be discriminated against.

Section 8: All drivers and chauffeurs to make sidewalk deliveries only, so they will not be responsible in losses in making deliveries in buildings.

Section 9: Should any difference arise between employer and employee the same shall be submitted to arbitration to both parties.

Section 10: Men to report at stable or garage not before 7 A. M.

Q. Now, when this contract between the union and the Brookline Trucking Company was signed you were aware 2277
of its provisions, weren't you? A. Yes, sir.

Q. Were you also aware of its provisions that men were not required to go to work before 7 o'clock in the morning? A. No, sir.

Q. You know that it was in the contract? A. That doesn't hold good, Mr. Murray.

Q. You know it was in the contract? A. There are many things in that contract.

The Court: No. Just answer the question.

The Witness: Yes, sir.

The Court: You knew it was in the contract or not?

The Witness: Yes, sir.

Q. You testified yesterday that you had some discussion with Weinheimer about trucking poultry, is that right? A. Yes, sir.

Q. What time did the poultry get into the City? A. 6 A. M.

Q. 6 o'clock in the morning? A. Yes, sir.

2279 Q. So you knew, didn't you, under the terms of this contract that Weinheimer nor any other member of this union was obliged to go to work at 6 o'clock in the morning unless they got extra compensation? A. Yes, sir.

Q. You knew that? A. Yes, sir.

Q. And you had a discussion, did you not, about Weinheimer refusing to go to work at 6 o'clock in the morning? A. Yes, sir.

Q. You wanted him to go to work at six, didn't you? A. Yes, sir.

Q. He told you, did he not, that under the terms of the contract and the union regulations, that he was not supposed to go to work before 7 o'clock in the morning? A. Unless paid for.

Q. He told you that, didn't he? A. Yes, sir.

2280 Q. You knew, did you not, that Weinheimer when he went to Brooklyn, I think you said, to the Liberty— A. Newark, sir.

Q. I beg your pardon? A. Newark.

Q. Thank you. Was the Liberty Insurance Company in that transaction? A. If you have reference to Liberty Mutual at Newark, yes, sir.

Q. Well, you testified yesterday, did you not, that Weinheimer took a truckload of merchandise to deliver to the

Liberty Mutual Insurance Company? A. I didn't say a truckload. He had some merchandise for them.

Q. All right. He took merchandise on a truck? A. Yes, sir.

Q. To be delivered to the Liberty Mutual? A. Liberty Mutual Insurance Company.

Q. And that was in Newark, wasn't it? A. Yes, sir.

Q. You knew, did you not, when he took that merchandise that your contract with the union provided for sidewalk deliveries only? A. That is not so.

Q. You know it is in the contract, don't you?

Mr. Cahill: If your Honor please, I must object. That does not state what has been read here, I call your Honor's attention to the provisions in the contract and I object to the question. 2282

The Court: I will allow it. The question is what knowledge this witness had of the contract.

Mr. Murray: Well, I will withdraw that question, if your Honor please.

Q. Was the custom followed by 807 in its dealings with you only in making sidewalk deliveries? A. If we asked a driver working for us to make anything other than a sidewalk delivery we then assumed all responsibility for any merchandise that was left on that truck while he was out of its sight.

Q. That was the understanding you had, was it? A. 2283 That is the understanding today.

Q. Well, to get back again to this scale of wages as provided in this contract: You say that about October 18th there was some discussion between Weinheimer and you concerning his being paid the salary as set forth in this contract, is that right? A. Yes, sir.

Q. Was there any difference between you and him at that time about what he was to be paid? A. The only

difference, sir, was that when I attempted to pay him he rejected that which we had in the envelope and he then took it up with Mr. Lovell, treasurer and owner of Brookline Trucking Company.

Q. What did you have in the envelope? A. I believe, sir, it was $42. I don't remember.

Q. Now, you gave him an envelope with $42 knowing that the contract provided for the payment of $56? A. That is correct.

Q. Is that right? A. That is right.

Q. Then did you have a discussion with these other men whose names you mentioned here, these three others whose
2285 names you just don't recollect now? Did you have a discussion with them as to what they were to be paid? A. Yes, sir.

The Court: Are you referring to Morton, De Canto and Graham?

Mr. Murray: Thank you, your Honor.

Q. Was Morton a member of Local 807? A. Yes, sir.

Q. What compensation did you offer him? A. I believe it was the same amount, sir.

Q. What compensation did you offer De Canto? A. The same amount, sir.

Q. What compensation did you offer Graham? A. That I don't remember. He was a helper. He was not a driver.

2286 Q. Well, now, there was a discussion, was there not, at that time between you and the four men as to whether or not they should not be paid the union wages as set forth in the contract? A. Yes, sir.

Q. Then what did you do after that discussion? A. I referred it to Mr. Lovell.

Q. Where was your office at that time? A. 157 Tenth Avenue, New York City.

Q. Did you get in touch with Mr. Lovell after this discussion? A. He was there, sir.

Q. Where? A. In the office.

Q. Then did you repair to a saloon at the suggestion of Mr. Lovell? A. No, sir.

Q Did you go to any saloon? A. Meehan's Restaurant.

Q. You say "No, sir." You mean you distinguish between a restaurant and a saloon? A. Most certainly.

Q. Well, did they sell liquors there? A. Yes, sir.

Q. Was there a bar there? A. Yes, sir.

Q. Did you stand at the bar? A. No, sir.

Q. Where did you go? A. We sat down in a booth that was separated from the bar and the dining room. 2288

Q. Your office was where then? A. 157 Tenth Avenue.

Q. But on the discussion about the payment of wages did Lovell invite you to the saloon for a conference or the restaurant, as you call it? A. Yes, sir.

Q. And when you got to the restaurant did Lovell buy drinks for the defendant? A. It is possible but it is not clear in my mind.

Q. Did you have any drinks? A. Possibly.

Q. Don't you remember? A. No, sir.

Q. How long did you stay in the restaurant? In Meehan's Restaurant? A. Three hours.

Q. What time did you get there? A. I would say it was some time around 5.30 or 6 o'clock, maybe.

Q. Was there any prohibition against Lovell, so far as you know, discussing the matter of wages with these men 2289 in his office? A. No, sir.

Q. Now, isn't it a fact that Lovell bought the men five or six drinks of whiskey? A. I said that is possible.

Q. Well, you know, Mr. Goddard, that most anything is possible.

Mr. Cahill: I object to counsel arguing with the witness.

The Court: Yes. I sustain the objection. There are some things that are not possible.

Mr. Murray: I said most everything, your Honor.

Q. Well, do you know whether or not Lovell did buy drinks of liquor for the men? A. I think there were some drinks had, sir.

Q. Well, isn't it a fact with Lovell as the host the men drank whiskey up to about 10 o'clock at night? A. If it was gin I wouldn't be telling the truth.

Q. If it was gin you wouldn't be telling the truth? A. No.

2291 Q. Well, I said whiskey. A. I don't recall what the drinks were. I think there were some drinks on the table but what the particular——

The Court: Well, were there any gin drinks?

The Witness: I don't remember. I don't know.

Q. You say there were drinks on the table? A. I think so.

Q. Did they remain on the table or did they go down the gullets of Mr. Lovell's guests?

The Court: Well, am I to assume that that question excludes Mr. Lovell?

2292 Mr. Murray: Well, his day will come in a minute, your Honor.

A. I believe there were drinks.

Q. When it came about 10 o'clock and after the consumption of quite some liquor, didn't Mr. Lovell in your presence say to Weinheimer and the other employees with him, "Boys, I signed a union agreement, but I don't want to pay the union wages."

Mr. Cahill: I object to the question on the ground that it assumes a state of facts not proved in evidence.

The Court: Overruled.

Mr. Cahill: Assumption as to time.

The Court: Well, the question is whether Mr. Lovell said that. That is all.

Mr. Cahill: No, the question begins when it came to 10 o'clock, and the testimony here is to the contrary.

The Court: Well, I will allow it. It is cross-examination.

2294

A. Yes, sir.

Q. That is what he said. Then isn't it a fact that Weinheimer said to him, "You signed a contract. We are members of the union and if we go back and we are asked whether or not we took wages under the union scale, we will be subject to censure," or was anything like that said? A. The only knowledge that I have of that conversation was that which Lovell was trying to arrive at. The particular words as they were said and at what time they came out, I have no vivid recollection.

Q. No, but was that the substance and the sense of what Weinheimer said to Lovell? A. Definitely.

Q. It was? A. Yes, sir.

Q. Then did Lovell in substance say to Weinheimer, "You can work under-the-hat"? 2295

The Court: Was that said?

The Witness: I don't recall it, sir.

Q. Well, from your experience in the trucking business do you know what the term "under-the-hat" means? A. Oh, yes.

Q. Do you? A. Yes.

Q. Doesn't "under-the-hat" mean something like this: That under a union contract where a member of a union is to get a certain wage a week— A. He is working for less than the union scale.

Q. Yes. And "under-the-hat" means, does it not, that the employee who is a union man in cahoots with the employer is not to let his union know that he is working "under-the-hat"? A. That is right.

Q. Now, with that in mind let me ask you again whether Lovell didn't say, "You can work 'under-the-hat,'" or something to that effect? A. I don't recall it, sir.

Q. How many union employees from September, 1937,
2297 up to June 1, 1938, according to your recollection were working for your concern? A. We were out of business in April. So——

Q. Well, April of 1938. Just approximately. A. Six or seven.

Q. Now, did any of those men at the suggestion of Mr. Lovell with your knowledge work "under-the-hat"? A. Not after Weinheimer's employment, no, sir.

Q. Did they before? A. Yes, sir.

Q. And were they then members of Local 807? A. Yes, sir.

Q. Was there a contract existing between the Brookline and Local 807 at that time? A. The only time I have seen a contract in existence between Local 807 and Brookline Trucking Company was in this building last
2298 Saturday.

Q. Well— A. That is it (indicating).

Q. Well, look at the date, will you? It bears date of April 1, 1937? A. I have seen it.

Q. Exhibit D? A. That is correct, but I had never seen it. I knew it was in existence.

Q. Well, you know now, don't you, that the same terms between Lovell or the Brookline Transportation and these union men were embodied in the contract before April 1, don't you? A. Yes, sir.

Q. While you were traffic manager at Brookline did any members of the union work "under-the-hat"? A. Yes, sir.

Q. Is it a fact that in spite of the terms of the contract calling for $56— A. And 50.

Q. Beg pardon? A. $56.50.

Q. $56.50 wages a week with an eight-hour day, that the Brookline paid some of those men as low as $18 a week? A. Yes, sir.

Q. And you knew at that time, didn't you, the terms of the contract between Brookline and Local 807? A. May I make myself clear on that last question, Mr. Murray, please? 2300

Q. Yes, if there is anything that is not precise about it. I have no objection, if his Honor permits it. A. I said that they worked——

The Court: I am going to permit it if you have no objection.

Mr. Murray: I have none, Judge; so it is mutual.

The Witness: I said that they worked, as you stated, as low as $18 a week.

Q. Yes. Now, had— A. I wasn't there at that time.

Q. But that was in your knowledge, wasn't it? A. Oh, yes.

Q. Now, that $18 a week called for how many hours of employment a week? A. Oh, perhaps an average of 2301 twelve or thirteen or fourteen hours a day.

Q. How many days a week? A. Six days unless you had a permit to work on Sunday.

Q. Some of these men were married men with children, weren't they? A. I believe so.

Q. Some of them had six children, didn't they? A. I don't know, sir.

Q. Well, we will get back to Meehan's Restaurant, Bar and Grill, at this conference of October 28th. Didn't Meehan say to Lovell, "You have had men working 'under-the-hat' for you"? A. Meehan?

Q. No. Pardon me. I will withdraw the question. Didn't Weinheimer say in Meehan's Bar and Grill to Lovell, "You had men working for you 'under-the-hat' although you signed this union contract"? A. Yes, sir.

Q. And didn't Weinheimer say furthermore, "You paid them starvation wages"? A. Yes, sir.

Q. Now, that was the first rift in the lute, wasn't it? A. Yes, sir.

2303 Q. That October 25 meeting between Weinheimer, you and Lovell? A. And the other men.

Q. Yes. And that rift in the lute was only had on Lovell's insistence that union men should work "under-the-hat"? A. Yes, sir.

Q. Did Weinheimer say this also, "You know I am shop steward here"? Did he? A. Yes, sir.

Q. In effect to Lovell? A. Yes, sir.

Q. Well, didn't Weinheimer say in substance to Lovell at that time, "I can't ask these men to work 'under-the-hat.' If I do, and the union finds it out, I will lose my card and my membership in the union"? A. Yes, sir.

Q. Then did Lovell say to Weinheimer, "I can take care of that"? A. I don't remember that, sir.

2304 Q. Did Lovell say in substance to Weinheimer, "I will give you $56 a week, but I will name a person that you can kick back to and then I will collect it from the person"? A. No, sir.

Q. Do you know whether or not in your dealings with Lovell that that was a practice that he had resorted to before the employment of Weinheimer? A. No, I don't think so.

Q. Do you know where the books of the Brookline Trucking Company are from April 1, 1937, up to April 15,

1938? A. To the best of my knowledge they are in Cambridge, Massachusetts.

Q. Do you know whether or not it was the practice of Lovell to enter on his books the payment of union wages such as $56 a week to chauffeurs and then only give them $18 a week? A. I have no knowledge of that, sir.

Q. Did you ever discuss it with Lovell? A. No, sir, I have never seen his books.

Q. Did Lovell ever talk to you about beating the income tax by doing that?

Mr. Cahill: I object to that as immaterial.
The Court: Sustained. 2306
Mr. Boudin: Exception.

Q. Now, after this conference in Meehan's Restaurant did Lovell pay to Weinheimer and these other members of the union the sums stipulated for employment in this contract? A. Yes, sir.

Q. Isn't it a fact that you resented the fact that these men demanded the full union wages and would not take less? A. No, sir.

Q. Isn't it a fact that Lovell resented it? A. Yes, sir.

Q. And isn't that the first difference that occurred between Weinheimer and the men that worked with him and the Brookline Transportation Company? A. Yes, sir,

Q. Now, after that meeting of October 28th in Meehan's Restaurant did you again talk to Weinheimer or any of 2307
the other employees about taking less than the union scale of wages? A. If my memory serves me correctly, sir, that was the one and only discussion we ever had. It is possible that others took place but they are not clear in my mind.

Q. Didn't some discussion come up nearly every pay day? A. Oh, yes.

Q. You wanted them to take less than the scale of wages? A. No, sir.

Q. Than the contract called for? A. No.

Q. And they refused, isn't that so? A. No, sir.

Q. Did Lovell? A. That is something else again.

Q. You say that is something else again? A. Yes, sir.

Q. Did Lovell? A. Yes, sir.

Q. Did that controversy go on nearly every week between Lovell and these men? A. Until the time we went out of business.

Q. To the time you went out of business? A. Yes.

Q. Did Lovell ask these chauffeurs who worked eight hours a day to take $18 a week? A. No, sir.

Q. Now, Mr. Goddard, you spoke of an incident here——

2309 A. Yes, that is correct.

Q. You don't know what I am going to say to you. A. Yes, I do.

The Court: You said an incident.

Mr. Murray: I haven't finished.

The Court: He may have a different incident in his mind.

Q. You spoke of an incident here yesterday, did you not, where Saturday afternoon came and these men asked for their wages? A. Yes, sir.

Q. Will you try to fix that time as precisely as you can? A. (No answer.)

Q. Do you know the month? A. When I stated yesterday——

2310

Q. No, I am asking you to state today. A. If you would allow me to make an explanation I will probably clarify it.

Q. Well, I will if it will give you any comfort. I have no objection to your making the explanation. A. I stated yesterday that I was pretty certain that Weinheimer came to work in September. I wasn't sure. You showed me a telegram today of October 18th and I got a slight idea of what I know about the time——

Q. Well, I will say to you, Mr. Goddard, if you are fearful that I have any documentary evidence to prove what time that was——

Mr. Cahill: Oh, I will object to any such statement by counsel.

The Court: Sustained.

Mr. Cahill: And I ask that the jury be instructed to disregard it.

The Court: They are.

Q. Well, I ask you again if you will be good enough to fix the time as precisely as you can concerning that incident on Saturday when the men wanted to be paid their 2312
wages. A. I would say some time in February or the early part of March of 1938.

Q. Weinheimer was still employed by the Brookline at that time, wasn't he? A. Yes, sir.

Q. If your memory serves you, who else was employed by the Brookline of Local 807 at that time, on that Saturday afternoon or morning when they wanted their wages? A. Ed Weinheimer, John Morton, Joe Gillan. There were possibly others, but I don't just recall.

Q. Well, there were probably at least four or five, weren't there? A. Perhaps, sir.

Q. When did you first advise them that Lovell was unable to pay them their wages? A. I would say around 11
o'clock in the morning. 2313

Q. Now, these men had worked all week, hadn't they? A. Yes, sir.

Q. Some of them at least eight hours a day? A. More.

Q. Some of them worked up to almost midnight, didn't they? A. It is possible but I doubt it.

Q. Do you know whether or not any of these men were married men with children? A. Yes, sir.

Q. Did they tell you that their wives were waiting for them to come home with their wages? A. Yes, sir.

Q. To buy food? A. Yes, sir.

Q. For their children? A. Yes, sir.

Q. Did they tell you that when they insisted on being paid? A. Yes, sir.

Q. Now, had there even been a time before that Saturday when Lovell had failed to pay his men? A. Yes, sir.

Q. And on how many occasions? A. I wouldn't venture.

Q. Were there a great number of occasions? A. Yes, sir.

Q. Where men had worked all week long and sometimes into the night and when Saturday came Lovell didn't pay them their wages? A. Yes, there were a few times.

2315 Q. Now, were there occasions before this Saturday incident in February or March, 1939, where Lovell had given his employees— A. 1938.

Q. —worthless checks? A. Did you say 1938 or 1939?

Q. 1938, rather. A. Yes, sir.

Q. On how many occasions did he give those men worthless checks? A. Many times.

Q. In payment of their weeks' wages? A. Many times. Worthless, but they were always made good after a fashion.

Q. At times you paid these men by check, didn't you? A. Yes, sir.

Q. Or at least Lovell did? A. Yes, but they weren't worthless because they were made good.

Q. You know when they got worthless checks that they
2316 went to trade people to cash them and that they came back worthless. You knew that, didn't you? A. Yes, sir.

Q. And that the trade people who had cashed the checks for them were on their necks to have them made good? A. Yes, sir.

Q. So when they met you that Saturday morning and insisted that they be paid for their work, they didn't do that in a threatening manner, did they? A. I would say

their dislike for F. K. Lovell for the things he had done, they would like to have taken out on me.

Q. Well, you knew, didn't you, that F. K. Lovell was very seldom seen and usually was hiding in the shade?

Mr. Cahill: I object to the characterization.

The Court: Sustained.

Q. You knew that you represented Lovell, didn't you? A. Yes, sir.

Q. Or at least the men assumed you represented Lovell, isn't that true? A. Yes, sir.

Q. And when these worthless rubber checks came bounding back there was no one connected with the Brookline 2318 that these men could go to but you, was there?

The Court: I will on my own motion sustain the objection to the rubber checks.

Q. Well, the worthless checks. There was no one they could go to about it but you, was there? A. Well, what do you call a worthless check, Mr. Murray?

Q. How long have you been in business?

Mr. Cahill: Now, if your Honor please, the witness has stated heretofore—I object to it.

The Court: Sustained.

Mr. Cahill: The witness said that these checks 2319 were made good.

Q. When were they made good? A. After a fashion.

Q. What is your conception of the term "after a fashion"? A. Well, it is a lengthy explanation.

Q. Let us have it if you please, if his Honor will permit it.

Mr. Cahill: If your Honor please, I would like to be heard on the question: That if the means shown was illegal this question is immaterial.

The Court: Well, is it your contention here that there were checks given that were not subsequently paid?

Mr. Murray: Well, I think, your Honor, that the witness was about to explain it, as I understand it. They were paid in dribs and drabs over a period of time. I don't say that as a fact. I only say it because your Honor asked me. That was my understanding, and then I might say to your Honor the reason that I pursue this line of cross-examination
2321 is to show the state of mind of the defendants at the time that they demanded their compensation for their labor.

Mr. Cahill: I would like to be heard on that, your Honor.

The Court: I will hear you.

Mr. Cahill: My position under the cases decided by the Supreme Court as I read them is that where unlawful means are resorted to, that the question of the legitimacy of the ends is immaterial, and that position is one that the Government takes in this case, and I object to this line of testimony on that ground.

The Court: Well, I shall require that the word
2322 "worthless" be eliminated.

Mr. Murray: All right, your Honor.

The Court: These were unpaid checks. Until there is some determination as to the circumstances I think it can be fairly said that they were worthless.

Q. Well, these checks that were dishonored on presentations of payment: How often did that occur—I will withdraw that question. You said that those checks that were

dishonored on presentation of payment were made good, I think you said, after a fashion, is that correct? A. Yes.

Q. Now would you be good enough to tell the jury what you mean by "after a fashion"?

Mr. Cahill: Well, if your Honor please, I press my objection on that.

The Court: Overruled.

A. There were a number of times checks were issued to these men and myself that the checks would come back marked "Insufficient Funds" and if and when they did, Weinheimer used to demand payment of those checks be made good. Invariably Lovell would send down another check plus the protest charges on the original check. On a few occasions there were a series of two or three of those, until that was paid up. 2324

Q. By that you mean that when the first check, payment on the first check was not made, he would send a second check and the second payment was not made on that? A. I think there were a few of those.

Q. Sometimes he would send a third check and payment was not made on that? A. I won't say that.

Q. Well, how long an interval of time on occasions elapsed between the time that these men got checks in payment of their services and the time when they actually got the cash? A. I used to get from Weinheimer some of those checks that he would bring back from the various men and go to Lovell's brother up on Tenth Avenue and get him to redeem them and bring back the cash. 2325

Q. Sometimes? A. Yes, sir.

Q. Now on this Saturday in February or March of 1938 when the men demanded their wages did you tell them at that time that Lovell had sent no money to pay them? A. I told them about 11 o'clock in the morning that Lovell had called up and said he had no intention of sending the pay-roll down. He couldn't meet it.

Q. Was it at that time that they said to you that they did not want you to leave the place until they were paid? A. No, it was later on in the afternoon when I had prepared to get my train for Boston.

Q. How long did they wait there? A. They were there when I left.

Q. You walked out, didn't you? A. Eventually, yes.

Q. And no one barred your way from going? A. At the beginning they did, yes, sir.

Q. Well, when you left about 5 o'clock in the afternoon no one tried to stop you, did they? A. I tried to explain that I had made several different attempts but eventually
2327 I got, I think, the 6 o'clock train for Boston.

Q. When you got the 6 o'clock train for Boston, did you get any money for the men that worked all week? A. I offered to get them $15 or $20 apiece from Mr. Lovell's brother, but they said no—"We want it and we want it in cash."

Q. So the consequence was that they got nothing? A. That is correct, sir.

Q. Now, did those same men who had not been paid on Saturday for the prior week's work, return to work Monday? A. I think that Mr. Lovell came to New York the following Monday morning upon my insistence that he straighten out the financial difficulties with our employees. And I think our job was tied up until about 11 o'clock.
2328 Weinheimer put the job back to work.

And he rode various places in New York City which cashed checks as a business——

Q. You mean Lovell did? A. Lovell and Weinheimer and myself.

Q. Did you get the checks cashed? A. I think the final analysis of that session was that he eventually borrowed money from his brother.

Q. On a Monday? A. Yes.

Q. And then came the next Saturday and pay day again, didn't it? A. Yes.

Q. He did not pay them that Saturday either, did he? A. I don't remember that.

Q. Don't you remember that you were not able to pay them and they did nothing towards keeping you in your office on the following Saturday or preventing you from leaving? A. Will you say that again, please?

The Court: The stenographer will repeat it.

Q. (Read.) A. I have no recollection of the following Saturday. 2330

Q. Now, you testified yesterday, did you not, that Weinheimer insisted on designating the men that should be employed from Local 807 in the operation of the Brookline trucks? A. Yes.

Q. Now, can you tell us about what time the first conversation on that subject took place between you and Weinheimer? A. I would not venture to say what time.

Q. Well, have you got any idea what month it was? A. No, sir.

Q. Do you know how long it was, bearing in mind that Weinheimer went to work on October 18th—how long it was after that date? A. No, sir.

Q. Do you know whether or not it was weeks or months? A. I am pretty sure that it was only a few weeks that Frank De Canto got through and he brought Joe Gillan in. 2331

Q. Did you ask that any particular member of Local 807 should go to work for you during that discussion? A. The only one that I hired free and clear was Brown.

Q. Well, did you ask Weinheimer when it became a question of employment of other members of Local 807 several weeks after October,—did you tell him any particular person that you wanted to work for you in the union? A. No, sir.

Q. Did you have anyone in mind when you had that discussion with Weinheimer? A. No, sir. He brought Joe Gillan, and Gillan turned out to be a grade A man.

Q. Well, you say you had a discussion with him in which he said to you, "I will pick out the men that works for Brookline"; is that right? A. That is right.

Q. But do you know what provoked that remark? Was it anything that you said? A. I think I know what provoked it.

Q. Well, was there anything said back and forth between you and Weinheimer that did provoke that remark on the part of Weinheimer? A. Weinheimer had said to me, not on one occasion but on many, that "If there is any
2333 added men to go on this job, I will bring them."

Q. Well, will you please confine yourself to the first discussion about the employment of men? A. I don't remember when it took place.

Q. Well, when you had the first discussion with Weinheimer, did you express a preference for any particular type of man you wanted? A. Other than that I wanted a man that could do his work, could handle our equipment, and treat our customers with the respect and dignity that was due them.

Q. Well, but did you designate any particular individual that you thought could accomplish those purposes? A. No, sir; I did not know anyone.

Q. Now, from your experience with the union were you
2334 aware of the fact that it was customarily the privilege of the shop steward to suggest to the employer the names of the men to be employed? A. To the best of my knowledge the employer has always reserved the right to hire his own employees.

Mr. Murray: May I have the answer stricken out?

Mr. Cahill: I submit it is responsive.

The Court: Denied.

Q. Well, did you know it was the custom, where there was a shop steward—— A. No, sir.

Q. —that he suggested to the employer the names of the men that were to be put to work? A. Did I know it was the custom?

Q. Yes. A. I knew it was a bad custom.

Mr. Boudin: I move to strike that out.

The Court: I will allow it to stand.

Mr. Boudin: Exception.

Q. No, Mr. Goddard, whether it was a bad or good or an indifferent custom, did you know it was the custom? 2336
A. Yes, sir.

Q. And when you had this first discussion with Weinheimer about the employment of men, you knew that that had been the custom for some years, hadn't you?

Mr. Cahill: Well, if your Honor please, may we have this more definite as to whether they be union men or non-union men?

Mr. Murray: We are only talking about union men, Mr. Cahill; I have no concern with anybody else.

The Court: Yes.

By the Court.

Q. Do you understand the question, Mr. Goddard? A. 2337
Very well, your Honor, thanks.

Q. What is that? A. Yes.

Q. You do understand it? A. Yes.

The Court: You can answer it.

The Witness: Give me the question again, please?

The Court: Read it.

Q. (Read.)

Mr. Cahill: If your Honor please, that is where I myself think the question is not clear, because this testimony includes——

The Court: He says he understands the question.

Mr. Cahill: But this testimony includes non-union men as well. There has been testimony by this witness on that point.

The Court: Proceed.

A. No, sir.

2339 *By Mr. Murray.*

Q. Now, Mr. Goddard, in that first discussion with Weinheimer in which he told you that he would pick out the men to be employed by the Brookline, did he tell you in substance the reason that the shop steward picked the man out was so that a concern like the Brookline could not pay them under-the-hat wages? A. Yes.

Q. Now, when Weinheimer said that to you, did you say that you thought you had the right to pick out your own men? A. Yes, sir.

Q. When you said that you did not have any definite men in mind to pick out, did you? A. No, sir.

Q. You testified yesterday, did you not, to an incident
2340 on a pier; I believe it was 88, was it? A. Perhaps it was 68. I thought it was 88. I questioned it myself when I heard his Honor say it was at the bottom of 48th Street, but I knew it wasn't.

By the Court.

Q. You mean the incident did not happen at the bottom of 48th Street? A. That is correct.

Q. But you do not mean that pier 88 is not at the foot of 48th Street? A. No, sir; I don't mean that.

By Mr. Murray.

Q. Well, at any rate, an incident happened——

The Court: I do not want to be found guilty of not knowing where the piers are around the waterfront.

Q. At any rate, an incident happened, according to your testimony yesterday, between Lovell and Weinheimer concerning the loading or unloading of a truck, was it? A. 2342
Yes, sir.

Q. Which was it? A. Concerning the unloading of merchandise on a pier.

The Court: Do I understand now that you want to make it plain that that happened at some other pier than 88?

The Witness: Yes.

The Court: And do you know the number of the pier?

The Witness: I think it is 68, and the reason for that is that at 88 there was no outside bulkhead, and that is where we were working, and I am pretty sure it was at 68. All the work at 88 is done on the 2343
inside. This happened at the outside bulkhead, so I am pretty sure it was 68.

Q. And if I recollect correctly, yesterday you thought it was watch parts or some such sort of merchandise? A. I said that I thought it was parts for fuel pumps.

Q. Or— A. Or watch parts, I am not certain.

Q. Now, could you fix that date for me? A. No, sir.

The Court: We will recess until five minutes after two.

(Recess to 2.05 P. M.)

AFTERNOON SESSION.

Mr. Cahill: If your Honor please, will your Honor direct the witnesses for both sides to report to the witness room if any there be present?

The Court: Yes; but is there any understanding between counsel with respect to any assistants? I
2345 am not speaking of counsel. It is usually the custom here where the Government has some representative upon whom it depends, to let him stay; and if the defendants have any officer of the union whom it wishes to keep here, he may remain.

Mr. Maguire: Well, I did have in mind to ask the Court's permission to keep Mr. Devery and Mr. Hickey and possibly Mr. Clarke.

Mr. Cahill: I have no objection. I am keeping Mr. Kennedy of the FBI. I do not intend to call him, but he is the only non-lawyer I have here.

The Court: Well, outside of Mr. Devery, Mr. Hickey and Mr. Clarke on behalf of the defendants, and Mr. Kennedy, with the reservation on your part,
2346 Mr. Cahill, to have two more if you have occasion to utilize their services, all persons who are expectant witnesses in this case will be required to leave the room, and they will be called in if, as and when their presence is required.

Mr. Cahill: May they report to Room 122, the witness room in the back, your Honor?

The Court: Wait. Do you want all witnesses on both sides in the same room?

Mr. Cahill: I have no objection.

The Court: All right. Witnesses may make use of the facilities in Room 122 on this floor. Is there anyone here who expects to be a witness in this case other than the persons whom I have named?

(No response.)

The Court: Apparently there are none.

All right, proceed.

RUSSELL B. GODDARD, resumed the stand.

Cross-examination continued by Mr. Murray. 2348

Q. Now, Mr. Goddard, before lunch we began to discuss the incident at Pier 68 or 88, or whatever it was, where you say something occurred between Mr. Lovell and Weinheimer. Do you think that was some time in February or March of 1938? A. I think so.

Q. Well now, what did Weinheimer do to Lovell? A. What did he do to Mr. Lovell?

Q. Yes. A. He had warned him——

Q. No, what did he do to him?

The Court: Well, what did he do? Not what he had done, but what did he do?

2349

A. Grabbed him by the coat lapels and pushed him away from where the men were working, admonishing him for handling freight that he was not supposed to handle.

Q. Did he strike Lovell? A. He struck him on the shoulder, sir.

Q. Did Lovell strike Weinheimer? A. No, sir.

Q. Did Lovell kick him in the leg? A. He might have.

By the Court.

Q. Well, did you see him? That is what counsel wants to know. A. No, sir.

The Court: Don't tell us what might have been done. He wants to know what was done so far as you saw.

By Mr. Murray.

Q. Isn't it a fact that Lovell first kicked Weinheimer in the shin and then that Weinheimer shoved him away?
2351 A. I could explain that best by saying that there was a scuffle before it was drawn to my attention.

Q. You were right there, weren't you? A. My back was to them and I was attracted by this little scuffle that they had.

Q. Now let me ask you again whether Lovell was not the assailant in that case? A. I don't know.

Q. Was there any court proceeding about that case? A. No, sir.

Q. Was there a police officer there or nearabouts on the pier? A. Not that I saw, no, sir.

Q. Was there any complaint made, so far as you know, by Mr. Lovell to a police officer at that time? A. No, sir, not that I remember.

2352 Q. Well now, in spite of that incident, afterwards you were friendly with Weinheimer, weren't you? A. Well, I would say that it was part of my job to be friendly and maintain an attitude of harmony and peace so that the work could progress.

Q. Were you or were you not friendly to Weinheimer after this incident? A. Yes, sir.

Q. You borrowed his car on occasions, didn't you? A. Never.

Q. Beg pardon? A. Never.

Q. Did you ever borrow his car? A. Never.

Q. Did you ever use his car to go any place? A. I may have ridden in it, sir, but I have never borrowed it.

Q. Did you ever use his car to go and buy a suit of clothes? A. I have never bought a suit of clothes in New York City.

Q. Did you buy anything else, using Weinheimer's car? A. I don't believe so, sir.

Q. Did you at any time after this incident borrow Weinheimer's car to drive any place? A. I can't answer that, sir. It is possible that I have ridden in his car on business, but I have never driven Weinheimer's automobile.

Q. That is, your answer is that you never drove it alone in the absence of Weinheimer; is that your answer? A. Yes. 2354

Q. Now, you spoke yesterday about an incident where there was a difference between your concern and Weinheimer about overtime. A. Yes, sir?

Q. And how much was involved in the overtime claimed by Weinheimer? A. To the best of my recollection, sir, it was an hour and 30 minutes.

Q. And that would amount to what in dollars and cents? A. $1.77 and 88 cents.

Q. Now, do you remember when that difference arose? A. Just prior to us going out of business, March or April.

Q. March or April of 1938? A. Yes.

Q. Do you know what Weinheimer claimed the $1.77 or $1.78 was due him for? A. To the best of my recollection 2355 he came into the terminal practically loaded, and there was some further merchandise to be loaded on to the rear of that truck that was then on the platform. As I remember it, the truck was backed into the platform, and a platform man finished loading that unit; and I think it was the difference between eight o'clock—8.30 in the evening until ten o'clock; and Weinheimer wanted to be paid from the time that the truck was backed into the dock and was finished.

Q. That was the sort of the difference, was it? A. Yes, sir.

Q. Well now, you stated yesterday, did you not, that the men quit work on account of the demand of Weinheimer and the refusal to meet the demand of this payment of $1.77 or $1.88? A. It was $1.77 and 88 cents.

Q. All right. How long did the tie up last? A. I don't think we ever went back to work.

Q. Well, do you mean that you quit working because Weinheimer demanded this dollar or two, or whatever it was? A. Subsequently, there followed his demands on Mr. Lovell, and Mr. Lovell's insistence and refusal to
2357 meet that demand for overtime. And I think the following Monday when Weinheimer and his men did not go to work, that at that time the delegates did appear some time in the morning or early afternoon of that following Monday, and that was all there was to that.

Q. Now, was this dispute about that amount of money on a Saturday? A. Yes. Mr. Weinheimer and Mr. Lovell had a discussion about it.

Q. On a Saturday? A. I believe so, yes, sir.

Q. Do you know what time on Saturday? A. No, sir.

Q. But the men quit work on Saturday over this dispute, is that it? A. The men were paid off, I think, on that Saturday, as I remember, Weinheimer insisting that he was going to be paid that overtime. I think that Mr. Lovell said that he would leave it to the delegates to decide on
2358 the fact whether he was right or wrong.

Q. Well, is it true that at any rate over this dispute about this sum of money there was some delay in the operation of your trucks? A. Yes, sir.

Q. Lovell refused to pay it; is that correct? A. Yes, sir.

Q. Weinheimer refused to work unless he was paid? A. Yes, sir.

Q. Now, did that situation bring a delay of a day or more in the operation of your trucks? A. Yes, sir.

Q. And that dispute only involved a couple of dollars, didn't it? A. Less than $2—no, just a trifle more than $2; that is correct.

The Court: $2.65, isn't it?
The Witness? Yes, $2.65, yes, sir.

Q. Now, at that time disputes with Lovell about payment or lack of payment was nothing new in your experience, was it? A. No, sir.

Q. It happened so frequently, did it not, that it became a matter of course? A. Yes, sir.

Q. Now, was that the time that you asked that other men be sent to operate the trucks, and was that the incident when you say that some other men did come and you saw them in conversation with Weinheimer? A. Yes, sir. 2360

Q. Do you recollect now the names of any men that came after this dispute up to your place of business? A. Yes, sir.

Q. What are their names? A. Carroll Macomber.

Q. Yes. A. And a chap by the name of Rosin.

Q. Yes? A. And the others I didn't know; I don't believe I had ever seen them before.

Q. Did you identify them as members of Local 807 at the time? A. Yes, sir.

Q. Now, did you offer them more money to operate the trucks than you were paying Weinheimer and the men that were operating it? A. There was no discussion about money at that time. 2361

Q. None at all? A. No.

Q. They did not ask how much they were to be paid, did they?

Mr. Cahill: I submit it has been answered, your Honor.

The Court: I will allow it.

Q. Did they? A. They knew how much.

Q. I am asking you if they asked you how much they were to be paid in the event that they went to work? A. No, sir.

Q. And you did not tell them? A. No, sir.

Q. On that occasion you testified, did you not, yesterday, that you saw Weinheimer talk to him outside? A. Yes.

Q. Some distance removed from your office? A. Across the street.

Q. You don't know what he said to them? A. I haven't the slightest idea.

Q. You did not ask them what he said, did you? A. I believe I asked Carroll.

2363

Q. But at any rate the men did not go to work in Weinheimer's place, did they? A. No, sir.

Q. And when they went away that closed the incident, didn't it? A. Yes, sir.

Q. And that is all there was to that incident, wasn't it? A. No, sir.

Q. Now, you said yesterday, did you not, in your testimony that there was an occasion or more where you submitted your difference to arbitration? A. Yes, sir.

Q. When was that? A. I believe we had arbitration before Ed Sheridan——

Q. No, when? A. In the month of December.

Q. What year? A. 1937.

Q. What did the arbitration involve? A. It involved

2364 the striking of Mr. Lovell by Weinheimer.

Q. Did it involve the payment of wages? A. I think there was a discussion at that meeting about the payment of wages.

Q. Was there any discussion about under-the-hat payments? A. Other than that Willie Campbell for Mr. Sheridan's benefit reviewed that which he knew about Brookline Trucking Company and the efforts that he had placed in Brookline Trucking Company attempting to make it a union job.

Q. Now, did Lovell or you or both of you choose Mr. Sheridan as arbitrator? Did you choose him as arbitrator? A. I believe so.

Q. You submitted all your differences to him, didn't you? A. Yes, sir.

Q. And Sheridan found against you, didn't he? A. I wouldn't say that.

Q. What would you say? A. I would say that Mr. Sheridan reprimanded Weinheimer and told him that under no condition would he stand for any more of his foolishness or his belligerence, and if I was willing, the delegates were willing that he was to go back and work and do a day's work for a day's pay and conduct himself 2366
in the manner that he should.

Q. You were willing that he go back to work, weren't you? A. Yes.

Q. And do a day's work for a day's pay? A. Yes, sir.

Q. So after this arbitration is it true that Weinheimer went right back to work for your concern? A. Yes, sir.

Q. And continued to work for it until some time in April of 1938; that is correct, isn't it? A. Yes, sir.

The Court: Have you answered the last question?

The Witness: Yes. I said yes.

Q. Now, you spoke of an incident yesterday, did you not, where a colored man named Brown was struck near- 2367
your office; is that right? A. Yes.

Q. How long had you known Brown? A. Ten years.

Q. Had you ever known Brown to work for the H. & S. Trucking Company? A. I knew that he worked there because Weinheimer said that he had worked with him on that job.

Q. Now, you testified yesterday, did you not, when you called Furey up about that incident he said he knew about it, or something to that effect? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. And he said to you something to the effect that you should have not employed the black something or other; is that right? A. That is right.

Q. Is that all he said to you on that occasion? A. I discussed——

Q. No, is that all he said?

The Court: Is that all he said?

A. No.

Q. What else did he say? A. Many things.

Q. All right, did he say this: "You know, that

2369 Brown"——

Mr. Cahill: May we have the answer, your Honor?

The Court: He said "Many things."

Mr. Cahill: Yes, but may we have the fact, when the question is put?

The Court: No. He said "Many things." Counsel has a right to inquire what the many things were, if he wishes to do so; and you have the right to redirect examination if he does not.

Q. Did he say to you in substance: "Did you know Brown can't get along with anyone"? A. Yes, I think he said that.

2370 Q. Did he say: "Brown, you know, is quarrelsome"? A. No, sir. He said he had plenty of trouble with him before this.

Q. Well, did he say this to you, that Brown had struck and beaten the manager of the H. & S. Trucking Corporation some time before? A. No, sir; he never related that to me.

Q. Did he tell you that he tried to get him his job back with the H. & S. Trucking Corporation? A. No, sir.

Q. Did your know that Brown had had trouble with the H. & S. Trucking Corporation? A. Only that which Weinheimer disclosed to me.

Q. Did Furey disclose it to you? A. No, sir.

Q. You stated yesterday that Furey in substance intimated to you that colored people should not be employed; was that in substance what he said? A. He said him or any other negro.

Q. Now, do you happen to know what per cent. of this Local 807 is colored people? A. Would I——

The Court: No. Do you know?

Q. Do you know? A. No. 2372

Q. Do you know that at least 10 per cent. of it is colored people? A. I would not be surprised.

Q. And isn't it true that Furey at that time was the delegate of Local 807? A. Yes, sir.

Q. And from your observation around the place where trucking was done, don't you know that a great number of Local 807 men were colored people who had steady employment? A. I know they are some members of 807 that are colored and work steady.

Q. Don't you know that there are some hundreds who do? A. No, sir.

Q. And yet you say now that Furey in substance said that colored people should not be employed? A. He didn't say that. 2373

Q. What did he say? A. He said that Brown or no other negro was going to work on my job.

Q. No other negro? A. That is right.

Q. Did you know that Furey was constantly getting colored people jobs out of Local 807? A. No, sir.

Q. Now, can you call to mind any trucking concerns that you know on the west side who employ or did employ before June 1, 1938, colored people who were members of local 807?

Mr. Cahill: I object to this as being beyond the scope of the direct and as being immaterial and irrelevant.

The Court: I will allow it.

A. Yes, sir.

Q. Will you name some of those concerns? A. D. & N. Transportation have practically eight or nine men, colored, working for them steadily.

Q. Members of Local 807? A. I believe so.

The Court: You mean had prior to June 1, 1938?

2375 The Witness: Working there for five or six years, your Honor.

Q. And was Austin Furey the delegate of Local 807 while these colored people were working for the trucking concern you have mentioned? A. Austin Furey was the delegate on the west side of New York City.

Q. Were there colored men working for a trucking concern on the west side of New York City? A. Yes, sir.

Q. Now, were you particularly anxious to employ Brown? A. No, sir.

Q. Did you employ him? A. Yes, sir.

Q. Did you have any purpose outside of getting the work done to employ him? A. He came to me like that (snapping fingers) and I needed him, and I put him to

2376 work.

Q. Did you arrange with Brown to pay him under the hat wages? A. I paid Brown $6.50, and that is the legal rate under the contract for a helper's day's pay.

Q. For how long a period of work did you pay him $6.50? A. He worked about five minutes.

Q. Did you want him to work the rest of the week, or did you ask him to? A. I had no intention of him working any more than that one day.

Q. Now, did Weinheimer tell you the day of this incident with Brown that he did not want to work with him because he is a trouble-maker? A. No, sir.

Q Or in substance that Brown could not get along with anybody? A. He had said to Brown in my presence during his discussion of him not going to work, that he had worked with Brown before and he never was going to work with him again.

Q. Well, did he elaborate on that in this conversation with you? A. Didn't have much time for elaboration, sir.

Q. Did he say that Brown was in the habit of assaulting people that he worked with? A. No, sir.

Q. Did he say anything that resembled that? A. He 2378
just said he was an under-the-hat black bastard and he couldn't go to work. That was the only part of the discussion.

Q. Now, did you see the start of the incident between Brown and Weinheimer? A. No, sir.

Q. Do you know whether or not Brown hit Weinheimer in the face or; rather, in the lips with this bale hook? A. No, sir.

Q. Did you see Weinheimer's face bleeding? A. Yes, sir.

Q. Did you see his lip split? A. No, sir.

Q. Did you see his lips bleeding profusely? A. No, sir. I saw a mark right here (indicating), and he still has the mark. That was bleeding.

Q. Do you know what the scar came from? A. I 2379
haven't the slightest idea.

Q. Do you know whether or not the scar came from the bale hook held in Brown's hand? A. No, sir.

Q. Do you know whether or not Brown was the assailant in that case? A. No, sir.

Q. Now, you were right there, weren't you? A. No, sir.

Q. Well, you told this jury yesterday, didn't you, that you heard a conversation between Brown and Weinheimer before any violence was shown on either side, didn't you? A. Mr. Murray, I didn't say that. I said that the fight started inside the body of the truck and I was not present.

Q. Where were you when the fight started? A. In the office talking to Boston on the telephone.

Q. How did you know a fight started if you weren't there? A. Because of a commotion.

Q. When you first saw Weinheimer before he went into the truck, did he have any cuts on his face? A. No, sir.

2381 Q. Was there any blood on his face? A. No, sir.

Q. And then did you see him go into the truck? A. I left him in the inside of the body of that truck five to ten minutes previous to all this happening.

Q. Did you see him go into the truck? A. I left him inside the body of the truck.

Q. Did you see him climb up and go into the truck? A. There was no need for climbing. He was backed into the platform.

Q. When he was backed in there, where was Brown at that moment? A. Brown had not then showed up.

Q. Now, did you see Brown approach Weinheimer? A. No, sir.

Q. At the time that you saw the cuts or blood, or whatever it was, on Weinheimer's face, were there any

2382 marks on Brown? A. Brown's hand was bleeding.

Q And Weinheimer's face was bleeding? A. No, sir.

Q. Weinheimer's face was clear at that moment, was it? A. At that particular moment, yes, sir.

Q. Well, what did you see Brown do? Did you see Brown do anything to Weinheimer? A. I saw Brown hit Weinheimer.

Q. With a bale hook? A. With his hand.

Q. Now, will you describe the place on Weinheimer's face where you saw a mark that you now describe as the scar? A. I believe it is on the right-hand side of his nose, starting at that point and coming down almost to the end of his nostril.

Q. You mean on the right side of Weinheimer's nose? A. Yes, sir.

Q Do you know whether or not that scar is the result of an injury inflicted by a bale hook that Brown had in his hand? A. I do not know, sir.

Q. Did Brown have a bale hook in his hand? A. No, sir.

Q. Did he have any weapon in his hand? A. Only those 2384
which he took away from Weinheimer and dropped them immediately.

Q. What were they? A. He took a bale hook away from him first and took a piece of pipe away from him later and took a monkey wrench away from him after that.

Q. How big a man was Brown? A. I would say he was as big as Weinheimer.

Q. Was he bigger? A. It would be hard for me to tell you. It is some time since I have seen Brown.

Q. Heavily built, was he? A. Oh, yes. Brown weighed 190 or 200 pounds.

Q. Powerfully built? A. Oh, yes.

Q. Very dark complexion? A. He was a negro.

Q. Well, there are differences in colors, aren't there? 2385
Degrees? Was he very dark? A. Not coal black, no.

Q Now, what was the last discussion that you ever had with Mr. Furey about Lovell? A. The last time I talked with Furey was the day that he came in with Mr. Campbell with regard to the overtime that Weinheimer was demanding.

Q Was that the last time you talked to Furey? A. I believe so.

Q. You testified yesterday, did you not, in substance that Furey said, "To hell with Lovell; let him go back to Boston if he won't pay union wages," at any time? A. He said that to Mr. Lovell. He did not say that to me.

Q. Were you there when he said it? A. Yes.

Q. Where did that conversation take place? A. Mr. Lovell's private office at West 20th Street.

Q. Now, before Furey said that, was there a discussion between him and Lovell about Lovell's failure on other occasions to pay his help on time? A. Yes, sir.

Q. And was there a discussion about dishonored checks that Lovell had sent to the union? A. Yes, sir.

2387 Q. Did Campbell say, "We have had a lot of trouble with you"? A. Yes, sir.

Q. Did he say in substance that "The men that worked for you are in a turmoil all the time about their wages and their hours"? A. Yes, sir.

Q. Did he say: "If you can't pay your help, you might as well go back to Boston," or something to that effect? A. He had been shown the payroll records that proved to him that the men were drawing from 70 to over $100 a week per man.

Mr. Murray: I move to strike out the answer as not responsive.

Mr. Cahill: It was responsive. I say that the question was duplicitous, and I ask that it be read.

2388 The Court: Read it.

(Question read.)

Mr. Cahill: "Or something to that effect."

Mr. Murray: May I press for an answer to that question and have it repeated?

Mr. Cahill: I submit it is an answer in the form the question was put.

The Court: Have you fully answered the question?

The Witness: Yes.

The Court: Put another question.

Q. On that occasion was there some discussion between Lovell and Furey about the failure of the Brookline to carry unemployment insurance? A. There was a discussion, but what it was I don't remember now.

Q. Was there any discussion about the same time concerning Lovell's failure to pay security insurance? A. I think that was also a part of the conversation, sir.

Q. And was there a discussion also about Lovell failing to carry compensation insurance? A. That I don't remember. 2390

Q. Now, did any of those men who worked for you, including Weinheimer, make trips out of New York to Boston? A. I think Weinheimer did.

Q In New York did Weinheimer and the other men employed by you load and unload the truck? A. Yes.

Mr. Murray: That is all.

The Court: Any further cross-examination?

(No response.)

The Court: Any redirect examination?

Mr. Ennis: Yes.

Redirect examination by Mr. Ennis.

Q. Mr. Goddard, Mr. Murray on cross-examination asked you if you had any conversation with Carroll Macomber when he came into your office and after he had spoke to Weinheimer on the occasion of that strike about overtime? A. He asked me if I had discussed—— 2391

Mr. Maguire: Now, just a minute. I object to that.

The Court: Yes.

Mr. Maguire: I move that the answer be stricken out.

The Court: Strike it out. I take it that is a preliminary statement you made.

Mr. Ennis: Yes. I merely wanted to bring him back to that incident.

The Court: Yes.

Q. Mr. Goddard, did you have any conversation with Carroll Macomber on that occasion? A. Yes, sir.

Q. What was that conversation?

2393 Mr. Maguire: Objected to, sir.

The Court: Overruled.

Mr. Maguire: Exception.

A. Carroll Macomber was asked to go to work. We explained to him that we had had a little difficulty with Ed Weinheimer and he had talked to Mr. Devery, the president of Local 807, and Mr. Devery was now on the telephone; that we wanted men to go to work per his instructions; and we asked Macomber to talk to Mr. Devery.

Q. What else was said? A. Mr. Macomber said hello to Mr. Devery; I heard him tell him who he was, what job he came from; and he said to Mr. Devery, "All right, I will take the papers and go to work."

Q. Then what happened? A. He took the papers, went
2394 outside, got into a conversation with Weinheimer, and the balance of the men that was there with Weinheimer; came back into the office and gave me back the papers.

Q. What did he say? A. He said, after talking to the men outside he felt it was very unwise for him to have his head handed to him; therefore he was not interested in going to work.

Mr. Cahill: Have his what handed to him? May I have that read, your Honor?

The Court: Yes.

(Answer read.)

Q. Mr. Goddard, were you employed by Brookline when this so-called contract, dated April 1, 1937, was signed? A. No, sir.

Q. Were you present at any of the negotiations which led up to the signing of this paper? A. No, sir.

Mr. Ennis: May I read one section of this?

The Court: Yes. 2396

Mr. Ennis: (Reading) Section 5 of this so-called contract states: "Seniority shall prevail. Members of the International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers with paid up cards to be employed and if not available then those who are to become members at the next meeting."

Q. Did you know that that provision was in the contract? A. Yes, sir.

Q. Did Edward Weinheimer ask you to put men to work on Brookline jobs who were not members of Local 807? A. Yes——

Mr. Maguire: Objected to as already gone over.

The Court: Sustained. 2397

Mr. Ennis: What was your Honor's ruling?

The Court: Sustained.

Mr. Ennis: If the Court please, although we have brought——

The Court: You have already had testimony about the employment of Weinheimer's brother and a man called "Yellow."

Mr. Ennis: The contract was not in evidence, your Honor, and on cross that had been gone into,

the provisions of the contract. That is all I wish to bring out.

The Court: Are you undertaking to show that there were any other persons employed besides the two mentioned?

Mr. Ennis: No, sir; but I merely wish to relate their employment to the contract which was put in on cross examination. I meant to go no further than that, your Honor.

The Court: All right.

Mr. Ennis: Your Honor sustains the objection?

The Court: I sustain the objection. The testimony is here; the jury has heard it; the contract is

2399 there, and the jury has seen it.

Mr. Cahill: Your Honor, as a matter of discretion don't we have the right to relate particular terms of the contract to a particular line of testimony?

The Court: Certainly. The contract is in evidence.

Mr. Cahill: Yes, but the contract was only read in part.

The Court: I made the statement when the contract was presented to the jury by Mr. Murray that anything that Mr. Murray did not refer to in the contract you would have the right to refer to.

Mr. Cahill: Does that carry with it, may I in-

2400 quire, your Honor, the right to relate a particular part of the testimony to a particular section of the contract so that the jury may understand it?

The Court: No, sir.

Mr. Ennis: That is all.

Mr. Murray: Just one question——

The Court: I will give you all the time that you require if and when this case reaches the jury to connect up any evidence with any other evidence.

Mr. Cahill: No, but, if your Honor please, I do not mean to argue with you, but it is the first time that I have ever had it held in a case where we have as much facts as we have here, that the District Attorney does not have the right to relate a specific provision of the contract which was put in on cross-examination——

The Court: Well, I am not presiding in any other trial but this one, and I will take all the responsibility for any mistakes that I make in presiding over this trial; and I do not feel that I have to be guided by what some other judge in the exercise of his discretion may do in some other trial; although I will 2402
be glad to take into consideration what any other judge, and perhaps more experienced than I, may have done in any trial. But I think I have been practicing law long enough and been on the bench long enough and had enough cases of this character to have the general idea of how it should be conducted.

Now is there anybody else who desires to ask this witness any questions?

Mr. Murray: Just one other question, if your Honor please.

Recross-examination by Mr. Murray.

Q. This incident that you have just related on redirect concerning a conversation with Macomber—did that have 2403
to do with this $2.50 argument between Weinheimer and Lovell? A. It was the aftermath of that.

Q. But connected with that incident? A. Yes.

Mr. Murray: That is all.

The Court: That is all. Next witness.

(Witness excused.)

2404 *George Beatty—For Government—Direct.*

GEORGE BEATTY, residing at Route 29, Bound Brook, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows.

Direct examination by Mr. Marks.

Q. Mr. Beatty, what is your business at the present time? A. I drive a truck for myself at present.

Q. Will you keep your voice up a little more please? A. I drive a truck.

Q. Do you own that truck yourself? A. Yes, sir.

Q. Do you own any other trucks? A. No, sir.

2405 Q. Now, were you formerly in business in Pennsylvania? A. Yes, sir.

Q. What was the name of that business? A. B. & B. Transportation Company, Inc.

Q. What position did you hold in that corporation? A. President.

Q. When was that corporation formed? A. In 1933.

Q. And how long did it continue to exist? A. Until 1938.

Q. What part of 1938? A. Around about June, the last of May or the first of June, 1938.

Q. Did you tell us—I am not sure whether you did—did you tell us where that corporation had its principal place of business? A. Uniontown, Pennsylvania.

Q. And the corporation was in the trucking business? A. Yes, sir; the trucking business.

2406 Q. Was it a common carrier or a contract carrier? A. Common carrier.

Q. And between what points did it haul merchandise? A. Between Uniontown, nearby points in West Virginia, Baltimore, and New York. New York was the principal business from the Uniontown, Pennsylvania, section to New York City.

Q. Can you tell us in what part of Pennsylvania Uniontown is in? A. It is in the southwestern part; it is about

20 miles from the West Virginia border, and 20 miles from Maryland.

Q. And how far from New York City, do you know? A. It is approximately 400 miles.

Q. What type of commodity did your company haul principally? A. Principally enamelware, aluminum products, glass products, and iron and steel machinery and foodstuffs.

Q. Did you haul principally to any one or two or three consignees in New York City? A. A big bulk of our business was enamelware to warehouses in New York City, different jobs in New York City and vicinity.

Q. Different companies? A. It was mostly one company. 2408
There was one large factory, and the biggest part of our business was for one company.

Q. What company was that? A. The Richmond Radiator Company.

Q. And where was their factory located in the City? A. Their factory was located in Uniontown, Pennsylvania, and they had a warehouse in New York.

Q. In what part of New York? A. It was in Long Island. I think it was 57th Street, Long Island, Continuous Sales and Service.

Q. Long Island City? A. Long Island City.

Mr. Maguire: Continuous what?

Q. Did you say Continuous Sales and Service? A. Con- 2409
tinuous Sales and Service, and Richmond Radiator Company; it goes under both names, I think.

Q. How many trucks did your company own in the early part of 1937? A. The company owned six pieces of equipment.

Q. Did it operate more than that? A. Yes, it operated around 20. We hired other trucks.

Q. You hired what? A. Other trucks.

Q. Now, when you hired other trucks what financial arrangements did you make with the people who rented the trucks to you? A. We hired a truck, and we usually got the owner to drive his own truck, and we took a certain percentage off of him for insurance and expenses, and he got the balance.

Q. Well, would you elaborate on that a little more? A. Our insurance costs us around 7 per cent, and we took 10 per cent for our profit and running expenses, and the owner got the balance.

Q. Got the balance of what? A. He got the full amount less around 17 per cent.

2411 Q. That is, the full amount of the revenue from each trip? A. Of the revenue, yes, from each trip.

Q. And your company got altogether about 16 or 17 per cent? A. Around 16 or 17 per cent; that is what our company got.

Q. In the early part and the middle part of 1937 did the drivers employed by you and those who drove trucks rented by you unload the trucks themselves in New York City? A. From the time we started we always unloaded our own trucks; our drivers unloaded their own trucks up till around in 1937.

Q Now, at the warehouse of the Richmond Radiator Company, did your drivers unload their own trucks? A. Our drivers just took the stuff to the tail-gate, or the end of the truck, and the warehousemen took it from there on

2412 on their trucks, small hand trucks.

The Court: What did you call that, the tail-gate?

The Witness: The tail-gate, or the end of the truck. We would call it platform delivery. We just took it and put it to the end of the truck.

Q. And who picked it up from there on? A. The warehouseman usually took it on his hand truck from there on.

Q. Did you make a trip to New York City in the early part of 1938? A. Yes, sir.

Q. Do you remember the occasion of that trip? A. I think the first trip I made in the early part of 1938 was the latter part of January.

Q. Where did you go after you arrived in New York City? A. I went to the office of the union, Local 807, on Varick Street.

Q. Well, do you know what building that is in? A. No. I couldn't tell you what building it is, or the number. I know it was over a bank building.

Q. Do you know what floor it was on? A. The second floor. 2414

Q. Now, will you describe to us the entrance to the office? A. Well, we went upstairs over a large——

Q. Excuse me. You say "we." Who was with you? A. There was a man, a Mr. Winterhalter, was with me.

Q. Who was he? A. He was working in New York to try to help to get our trucks unloaded and get them out of New York.

Q. Will you go on and describe the entrance to the office?

Mr. Maguire: I object to that as immaterial.

The Court: Overruled.

Mr. Maguire: Exception.

Q. Will you describe to us, Mr. Beatty, the entrance to this office? A. We went upstairs and we knocked on the 2415 door, and some fellow looked out at us and asked us our name. Mr. Winterhalter had previously made an appointment and some fellow got our names and let us in in a small, practically a hallway with a little wicker window. We waited in that wicker window for someone——

Q. Did you ask for anyone when they asked for your name? A. No. We did not ask for anyone; we told them we had come to get straightened out with the union; we were having trouble delivering in New York City.

Mr. Maguire: I move to strike out "we were having trouble."

The Court: Strike it out.

Q. Is that what you told him?

The Court: Well, the difficulty, Mr. Marks, is "told them." You have not shown yet whom he talked with.

Q. Do you know who it is that asked you your name? A. No, I don't.

2417 *By the Court.*

Q. Well, you came to this building over on Varick Street? A. Yes.

Q. And you got in and you talked to somebody? A. Yes.

Q. That was in the first room? A. Yes.

Q. Then did you go into another room? A. Before we got in the room we had to knock on the door.

Q. Well, but did you get in there? A. Yes, we finally went in.

Q. Did you see anybody there? A. We waited a while and finally a Mr. Brennan took us in another room. He came and took us in another room.

2418 *By Mr. Marks.*

Q. Before Mr. Brennan came how long did you stay in the small room?

Mr. Boudin: I object to that as immaterial.

The Court: Sustained.

Q. Were there any chairs in the small room?

Mr. Boudin: I object to that.
The Court: I will allow that.
Mr. Boudin: Exception.

A. No, it was just a small hallway like with a wicker window in it. We stayed up there.

Q. For how long?

Mr. Boudin: Objected to.
The Court: Sustained.

Q. Finally Mr. Brennan showed up? A. Yes, a Mr. Brennan showed up. 2420

Mr. Boudin: If your Honor please, I object to the form of the question.
The Court: I will sustain the objection to the word "finally."
Mr. Boudin: And I move to strike it out.
Mr. Marks: I withdraw the word "finally."
The Court: All right. Then the question will be allowed if that word is eliminated.
The Witness: What was the question?

Q. Did Mr. Brennan make an appearance? A. Yes, Mr. Brennan—— 2421

Mr. Boudin: I object to the form of the question. Did he see Mr. Brennan is the only thing that is important.
The Court: Overruled.
Mr. Boudin: Exception.

A. We saw Mr. Brennan and he took us into another little room.

Q. What did he do there? A. He shut the door and locked it up.

Q. Who was present in that room? A. Just Mr. Brennan, Mr. Winterhalter and I.

Q. Now, do you remember how long you were in that room? A. Possibly a half hour or three-quarters of an hour.

Q. And did you have a conversation with Mr. Brennan in the locked room? A. Yes, sir.

Q. What was that conversation? Tell us as best as you can remember what was said by all the parties. A. Well, the conversation was what we had to do to get our trucks
2423 starting operating. We could not come into New York City then.

Mr. Boudin: I move to strike out, "We could not come into New York City then."

The Court: Yes, strike it out.

Q. Mr. Beatty, try to reconstruct that conversation now as best as you can remember it and tell us who spoke first and what he said and who replied, and so forth. A. Well, I think there were introductions just as we went into the room. Then we told him——

Q. Did Mr. Brennan say who he was? A. Yes. He told us who he was.

Q. What did he say? A. He was the delegate that had
2424 our case.

Q. And who spoke next? A. I did next, and I told him we was there to try to get our business going again.

Q. What did you tell him? A. I told him that we were tied up and our drivers were tied up and we could not afford to lay around. We had to get moving.

Q. Did you tell him how long you had been tied up? A. I told him that we had been having trouble for the last month and now we had been tied up for a week or ten days and we could not get anything moving.

Q. Did you tell him how many trucks you had tied up? A. I told him we had around fifteen or twenty trucks tied up.

Q. And do you remember anything else that you told him? A. Well, he produced a contract for the union and said we had to sign a contract with the union before we could do anything at all, and the contract—I was allowed to read it—and it had the prices we had to pay the union and the rates, and I thought the rates were pretty high—

Q. No, tell us what you said.

The Court: Strike out that he thought the rates were high. 2426

Q. Tell us what you said? A. I told him that the rates were pretty high, and he explained that that was their scale in New York and nothing could be done about it; that that is what everyone paid.

Q. Yes? A. And that we could not do anything until we signed a contract. Well, I wasn't anxious to sign a contract——

Mr. Boudin: I move to strike it out.

The Court: Strike it out.

Q. Tell us what you told him, Mr. Beatty. A. I told him that we wanted to get our—the main thing we was interested in was getting our truck running because they 2427
had us tied up and we could not operate; and he explained to me that we could not do anything until we signed a contract; that inasmuch as I had been convinced even before I got here——

Mr. Boudin: I move to strike out the words beginning with "inasmuch as."

The Court: Strike it out.

Q. Mr. Beatty, just the conversation in that room——

The Court: Mr. Beatty, we do not want your mental processes. The jury are going to use theirs when they have heard what this case is about. What he wants you to tell us is what was said by you and Mr. Brennan and anybody else, and from the statement that you give us as to what transpired upon this occasion, then the jury will be able to make a determination of this case along with the other evidence. Do I make the point clear?

The Witness: I think so.

2429 The Court: It is not what you or I may think about something; it is what we know and what we can tell according to the requirements of legal procedure. Now, just give us the conversation and never mind your opinions or your mental processes except in so far as you have to use your mental processes to recall the conversation to tell us about it.

The Witness: Well, it is hard for me to——

The Court: Do you want the last part of your answer read to pick up where you left off?

The Witness: Yes.

The Court: Read the last part of his answer.

(Last part of answer read.)

2430 *By the Court.*

Q. What did you say to him, if anything, or did he say anything further to you before you said anything? A. We talked a good bit, but I can't remember everything we said.

Q. Tell us what you can remember. A. The main thing I can remember is he told me we had to sign a contract before we could do anything at all.

Q. Now, when he told you that, what, if anything, did you tell him? A. Well, I told him if that is what we had to do, I would have to sign a contract; that that was what I came there for, to do everything that had to be done in order to get our trucks in operation.

Mr. Boudin: I can't hear, your Honor.

The Court: The stenographer will repeat the answer.

(Answer read.)

By Mr. Marks.

2432

Q. Can you remember any further part of that conversation? A. No, I can't remember too much of it.

Mr. Marks: May I have this marked for identification?

The Court: Yes.

(Marked Government's Exhibit 14 for Identification.)

Q. I show you Government's Exhibit 14 for Identification Mr. Beatty, and direct your attention particularly to this portion of page 1 (indicating). Does that refresh your recollection as to any further part of your conversation with Brennan? A. Well, it is substantially the same as——

2433

Q. No. Does that refresh your recollection?

The Court: Does that refresh your recollection? That is what counsel asked you.

A. Yes.

Q. Now, can you tell us any part of that conversation that you have left out so far? A. The only thing that I

can think of that I left out is that Mr. Brennan told us if we signed the contract that that would give us the business out of that section; that our competitors would not get any of it; that they could not come in; they would not have any contract; we would be the only one in that section which could haul this merchandise.

Q. Did you say anything to Mr. Brennan about whether or not you wanted to sign a contract?

Mr. Boudin: I object to that as immaterial.

The Court: I will allow it.

Mr. Boudin: Exception.

2435 A. I told Mr. Brennan that I didn't like to sign that contract because we would have trouble paying the wages. They were terrible high wages.

Q What did he say? A. He said nothing could be done about it; that that was the local scale, and that everyone had to pay it.

Q. Now, did you sign anything in that room? A. Yes, I signed a contract.

Mr. Marks: May I have this marked, please?

Mr. Boudin: Is that being offered in evidence?

The Court: No.

(Marked Government's Exhibit 15 for Identification.)

2436

Q. I show you Government's Exhibit 15 for Identification and ask you if you have seen that paper before? A. Yes; that is the contract I signed on that day.

Q Is your signature on it? A. Yes.

Mr. Marks: I offer it in evidence.

Mr. Boudin: No objection.

(Government's Exhibit 15 for Identification received in evidence.)

The Court: We will take a recess at this point. I would like to talk to counsel for a moment.

(Brief discussion between Court and counsel at the bench, off the record, not within the hearing of the jury.)

(Short recess.)

Mr. Marks: May I read a couple of lines to the jury?

The Court: Yes.

Mr. Marks: This paper, ladies and gentlemen, Government's Exhibit 15 in evidence, bears the date 2438
of January 27, 1938: "Agreement entered into between B. & B. Trucking and Local 807." Signature for the firm B. & B. Transportation Co., Inc., George Beatty, president; for Local 807, Brennan.

By Mr. Marks.

Q. Now, Mr. Beatty, after you signed that paper which is Government's Exhibit 15, did you and Brennan and Mr. Winterhalter—was that the name? A. Yes.

Q. (Continuing) —and Mr. Winterhalter go any place? A. Mr. Brennan took us out to Long Island to the Richmond Radiator Company's warehouse in his car.

Q. And what did you see him do there? A. He went 2439
in and talked to someone in the radiator company.

Q. Now, that you have said was your largest account? A. That was our largest account.

Q. After he came out what did he say? A. He said that it was fixed up that we would have all the business from now on.

Q. Did he say what he meant by "all the business"?

Mr. Boudin: Objected to.

The Court: Sustained. What did he say?

The Witness: He says that he fixed it up for us, that we were fixed up, signed the contract with the union, and were in good standing with the union, and that would give us all the business, because there was no other company had a contract from our location.

Q. Now, what else was said, if anything, at that time? A. He said he had an appointment with a couple of other fellows at a diner right practically next door there, and he looked around for them awhile, and they were not
2441 there; so he brought us back downtown——

Mr. Boudin: I object to the further statement of the witness as not responsive to any question.

The Court: Yes. I sustain the objection.

Mr. Marks: I beg your Honor's pardon. I didn't hear.

The Court: I sustained the objection as to the fact that he looked around and did not see them. This man can't tell whether he saw them around. Read the answer.

(Answer read.)

The Court: Strike out "and he looked around for them awhile and they weren't there."

2442

Q. Was anything said in that conversation as to what 807 men would go to work for you? A. No, sir; there was nothing said.

Q. Now, did Brennan leave you at about that time? A. He brought us back downtown; I don't remember what street, but it was practically downtown, and dropped us off where we asked him to, I think it was.

Q. Did you hire anybody in New York City? A. Yes, sir.

Q. About what time——

Mr. Boudin: I object to that as calling for a conclusion.

The Court: Yes.

Mr. Boudin: I move to strike it out.

The Court: Yes, strike it out.

Q. Did you have a conversation with anyone at about that time with respect to working for you? A. Yes, we hired a man to work for us.

2444

Mr. Boudin: I move to strike out after "yes."

The Court: Yes, strike it out.

Q. With whom did you have a conversation, do you remember? A. Mr. McGrevy or McGrivy.

Q. Do you remember whether it was McGavish? A. McGavish that was. I can't remember exactly, but it was McGavish, I believe.

Q. Where was that conversation? A. It was in some small hotel on Cortlandt Street.

Q. Were you staying there? A. My driver was staying there, and it was in his room.

Q. In your driver's room? A. Yes.

Q. Now, did McGavish show you anything? 2445

Mr. Boudin: I object to that as immaterial.

The Court: Overruled.

Mr. Boudin: Exception.

A. He showed us his union card and union book.

Mr. Boudin: I move to strike out the answer on the ground that it is——.

The Court: Overruled.

Mr. Boudin: Exception.

Q. Did you examine his union book? A. Yes, I examined it to see if it had his name in there and was up to date.

Mr. Boudin: If your Honor please, I object to that and move to strike it out.

The Court: Strike out after "I examined it."

Q. What did you see when you examined it?

Mr. Boudin: That I object to, if your Honor please.

2447 The Court: Sustained.

Q. What did you see on the book?

Mr. Boudin: That has been sustained, I understand.

The Court: Yes, sustained.

Q. Did you have any conversation with McGavish? A. Well, I naturally talked to him quite a while.

The Court: You may answer the question yes or no, whether you had a conversation or not.

The Witness: Yes, sir.

Q. And what was that conversation?

2448

Mr. Boudin: That is objected to.

The Court: Sustained.

Q. Now, did McGavish work for you? A. Yes, sir.

Q. How many days? A. Two days.

Q. Do you recall an occasion when you again saw him at this hotel on Cortlandt Street one or two days after the first meeting? A. After we hired him he worked one day——

Mr. Boudin: One moment. I object to that.

The Court: I will allow it.

Mr. Boudin: Exception.

Q. You say he worked one day. Go ahead. A. He worked one day and I seen him that evening.

Q. Did you see anybody else that evening in the hotel? A. Yes, sir.

Q. Whom did you see? A. I can't think of his name for the moment.

Q. This person whom you saw—did you ever see him again? A. I saw him many times after that.

Q. And you know him? A. Yes, sir. 2450

Q. Well, will you stand up, Mr. Beatty, and tell us if you see him in this courtroom? A. (Standing) (No answer.)

Q. You can step down and see if you see him. A. I don't see him now, but I thought I saw the man awhile ago.

Q. Before the recess? A. Before the recess.

Q. Well, take your time.

Mr. Marks: May he step down, your Honor, and look around?

The Court: Certainly.

Q. Do you want to step down? A. (Leaving the stand.) I am sorry, I can't see the man now. 2451

By the Court.

Q. Where was he when you saw him? A. At the hotel.

Q. No, I mean before the recess. A. Oh.

Q. Where was he then? A. I thought I saw him right down here in the front row, but I didn't get a very clear look.

Q. How many times have you seen the man? A. Dozens of times. He even stayed one night in my home.

Q. You don't see him here now? A. No, I don't see him now, and I am sure I would know him. I know him quite well. His name is Michael Cahill.

Mr. Boudin: The defendant Cahill, you mean?

The Witness: I don't know if he is a defendant, but Michael Cahill—yes, there he is; I missed him (indicating).

Mr. Marks: May the clerk call the name of Michael Cahill?

The Court: Yes.

2453 The Clerk: Michael Cahill.

(A man stood up.)

By Mr. Marks.

Q. That is the man, the one who stood up? A. Yes, that is the man, Michael Cahill.

Q. Was that the first time you ever saw Cahill? A. Yes, sir; that is the first time I ever saw him.

Q. Will you tell us if anybody was with him? A. There was four or five or possibly six other truck drivers with him.

Q. Do you know who any of the others were? A. No, I didn't recognize these.

2454 Q. Now, where were you when you first saw them? A. In the hotel. They came up to the room where we were.

Q. And was McGavish there at the same time? A. He wasn't there then.

Q. Did you have any conversation with Cahill and the others? A. Mr. Cahill asked me up to talk about going to work on our job. He said that he was the one I had to hire.

Q. Tell us the whole conversation. A. He said that he stopped the job and that he was the one we had to hire. We were supposed to meet him out at the Long Island warehouse but we missed him.

Q. What did you say? A. I told him that we had already hired this other man, and while we were talking this other fellow came in there and he and Cahill got in quite an argument——

Q. Excuse me. Was the other man alone? A. Yes, he came in by himself.

Q. Yes?

The Court: What was his name? 2456
The Witness: McGavish.

Q. Now, tell us what was said after that.

Mr. Boudin: I object to that as immaterial, irrelevant and incompetent.
The Court: Overruled.
Mr. Boudin: Exception.

A. They had quite an argument and Cahill told me that I had to hire him; that he is the one that stopped the job, and therefore I had to hire him; he would be the steward on it, and tell me who to hire; and he and this Irishman McGavish, they got into a pretty good argument, and Cahill called him an under-the-hat son-of-a-bitch, and said 2457
that they had trouble with him before and would have more trouble, and he would have to get off his job.

And McGavish said he knew some delegate, Willie Campbell, I believe it was, and he said he was a friend of his, and he would see him and straighten it up, and I would not need to worry no more about it; and he worked the next day——

Mr. Boudin: One moment before the witness proceeds to something else, I move to strike out the conversation.

The Court: Motion denied.

Mr. Boudin: Exception.

Q. Can you remember any further part of that conversation? Well, I can't remember much more except that there was quite an argument; there was such an argument that the hotel raised a fuss with me and said I could not——

The Court: Strike that out.

2459 Q. Did McGavish work for you after that? A. He worked the next day and then he disappeared and I never seen him after that.

Q. Who worked for you after that? A. Cahill came to work and he believed him then when he said that we had to have him work for us, and he went to work then.

Q. Did you have any discussion with Cahill around that time about who in addition to Cahill himself would work for you? A. Well, he said he would pick the men that worked under him.

Q. What did you say? A. Well, I said that we should be able to pick our own men; but he said he was the one who stopped the job, and he would run the New York end of it; that is, the men that we hired; when the trucks

2460 came in, he would say who went out on them.

Q. Can you tell us again about when this was, this conversation? A. That was right around the last of January, right after we had signed our contract; two or three days after we had signed our union contract.

Q. Now, did you send any checks to Cahill after that? A. Yes, sir.

Q. How often? A. Every week.

Q. How did you pay him? In what amounts? A. We paid him according to how many men had worked for us, so much a day, a specified rate per day, we paid him.

Q. At what rate?

Mr. Boudin: I object to that as immaterial.

The Court: Overruled.

Mr. Boudin: Exception.

A. It was a contract rate on the contract: If we had one truck come in, he sent a man out; if we had two trucks, he sent two men out, and we had to pay him two days' wages; and it was three trucks, it was three men.

Q. Do you remember whether the rate was $9.42? A. 2462
$9.42 was one rate. Then there was one that was $11-something; a real small truck was $8-and-something. It is all on the contract.

Q. And you paid him the rate that appeared on the contract? A. Yes, sir.

Q. Do your remember when you next saw Cahill after your trip to New York of which you have told us? A. Well—

Mr. Marks: Oh, I withdraw that.

Q. Do you remember in your conversation with Cahill, or in any of your conversations with Cahill on your first trip to New York which you have described to us, whether anything was said about prior telephone conversations? 2463

Mr. Boudin: Objected to as immaterial.

The Court: He may answer yes or no.

A. Yes, I talked to him.

Q. Will you tell us the substance of the conversation?

Mr. Boudin: Objected to.

The Court: Fix the time as nearly as you can.

Q. Well, can you tell us the time of the conversation? A. No.

By the Court.

Q. When was it with respect to the time you signed the contract? A. I signed the contract in the last few days of January.

Q. When was it you had this conversation with him about telephone conversations? Was it before or after? A. It was after that.

Q. How long after? A. A few weeks afterwards.

2465 *By Mr. Marks.*

Q. And where was this conversation, in New York City? A. Yes, it was in New York City.

Q. Can you tell us where? A. Well, they had been calling us up——

The Court: No. Where in New York City?

A. (Continued) It was right around West Street. We had an office there; I can't remember the number. It was near Cortlandt Street; we had an office on West Street. We just had space in with someone.

Q. What was said in that conversation, Mr. Beatty?

2466 Mr. Boudin: Objected to.

The Court: Overruled.

Mr. Boudin: Exception.

A. Well, our main conversation was how much it was costing us always to get our trucks unloaded. It cost us too much. One man to a truck was what always hurt us.

Mr. Boudin: I object to that.

By the Court.

Q. Is that what was said? A. Yes.

Q. Or are you giving us now your mental conclusion? A. No, sir; I am telling you what we talked about.

Q. Are you telling us what was said, not your conclusion from what was said, but what words were used? A. Well, I am doing the best I can, sir, to do that.

The Court: All right, proceed.

The Witness: What was the question now?

By Mr. Marks. 2468

Q. Well, go on with the substance of that conversation.

Mr. Boudin: As I understand it, if your Honor please, the witness says they talked "about"; not what they talked.

The Court: I understand what the witness said. Proceed. Take your exception.

By the Court.

Q. Have you given us all the conversation? A. I am doing the best I can.

Q. I say, have you given us all? A. No.

Q. Well, give us the rest of it. A. Oh, I can't think of any more right now. I would like to hear the last question and answer. 2469

The Court: Let the last question and so much of the answer that the witness gave be read.

(Question and answer referred to read.)

The Witness: Every time I seen Mr. Cahill that was what I had the talk about, because it came to so much a week——

Mr. Boudin: I object to that, if your Honor please, and move to strike it out.

The Court: Yes.

By Mr. Marks.

Q. Just tell us what was said. A. It cost us so much that it was terribly hard to pay; it took us all the money to pay them.

By the Court.

Q. That is what you said? A. Yes.

2471 Q. What did he say? A. Well, he said that was the union scale; they could not help what it costs. It was our worry to get the money.

By Mr. Marks.

Q. Was there anything said about telephone conversations? A. Well, the least little thing they always——

The Court: No.

Q. Was there anything said about telephone conversations? Just yes or no, Mr. Beatty. A. Yes, there was.

Q. Tell us what was said on that subject.

2472 Mr. Boudin: Objected to.

The Court: Overruled.

Mr. Boudin: Exception.

A. They called us long distance. It always cost us a dollar and——

Mr. Boudin: I move to strike it out.

The Court: Strike it out.

2473

You were not asked what somebody did; you were asked what somebody said.

Q. Do you understand the question? A. No, I don't believe so.

Q. Just tell us what you and Cahill said at that time on the subject of telephone conversations? A. Well, I objected to his calling us so much on the telephone——

Mr. Boudin: I move to strike it out.

Q. Is that what you said to him? A. Yes.

2474

Mr. Boudin: That is a conclusion, not conversation.

The Court: Objection sustained; answer stricken out.

What was it that you said to him? When you tell us you objected, that is a conclusion. We want what you said.

The Witness: Well, it is so long ago, it is hard for me to remember the exact words.

The Court: Well, what were the words in substance that you used? What did you tell him?

The Witness: I told him not to call us so much and run our telephone bill up.

2475

Q. Did you say anything else about it? A. I can't remember anything now.

Q. Now, had you received any telephone calls before that?

Mr. Boudin: I object to that as immaterial.

The Court: Overruled.

Mr. Boudin: Exception.

A. Yes, we had received a number of telephone calls when we had our trucks held up in New York.

Q. Had you received any such calls before the time that you signed that paper which is Government's Exhibit 15? A. Yes, sir.

Q. Approximately how many such telephone calls had you received up to that time?

Mr. Boudin: Objected to.

A. Well, I could not tell you exactly. Perhaps as many as——

The Court: Overruled.

Mr. Boudin: Exception.

2477

Q. Do you know with whom you had any such telephone conversations?

Mr. Boudin: Objected to as calling for a conclusion of the witness.

The Court: Well, he can say whom he had them with, if he knows.

A. No, I can't remember. Before we signed the contract, I can't remember the names.

Q. Who paid for those telephone calls? A. We paid for them. The B. & B. Transportation Company paid for them.

2478

Mr. Boudin: Objected to.

The Court: Overruled.

Mr. Boudin: Exception.

Mr. Marks: May we have the answer read?

The Court: Yes.

(Answer read.)

Q. Now, did you ever have a talk with Cahill later on about that? A. Yes.

Q. What was said about that?

Mr. Boudin: That is objected to.

The Court: Overruled.

Mr. Boudin: Exception.

A. Well, I talked to him about them, and he said that they had paid for one or two calls. He didn't say who "they" was, and they would not call so much from then on because it was costing us too much.

Q. How much did an average conversation cost you, Mr. Beatty?

Mr. Boudin: I object to that.

The Court: Sustained.

2480

A. $2.

Mr. Boudin: I move to strike out the answer.

The Court: Strike out the answer.

Q. Do you remember when you next saw Cahill after your meeting at the end of January? A. Well, I can't—I seen him every two or three weeks or a month; I came to New York for something or other, and each time I naturally saw him.

Q. In the conversation which you related before when you discussed the matter of paying one man per truck, what did he say? A. He said that was union rules.

Q. And what was your answer? A. That it was the same old thing; that we could not afford it.

2481

Q. Now, did you see him in Uniontown? A. Yes, he came to Uniontown.

Q. Do you remember when that was? A. That was in the early part of March; it was around the early part of March.

Q. Of 1938? A. 1938 that would be.

Q. Was anyone with him? A. Yes, there was a man with him.

Q. Do you know who that man is? A. He gave his name as Murray.

The Court: You had better get the first name.

Mr. Marks: Yes, there is a Cahill and Murray here, your Honor. There might be some confusion.

Q. Where did you see him in Uniontown? A. They came into Uniontown and called me up, and I met him somewhere; I don't remember where I met him.

Q. Now, did you have a conversation with those two men at that time? A. Yes, sir, we had a long conversation.

2483 Q. Will you tell us as best as you can now remember it the substance of that conversation? A. We had been paying them——

The Court: No, don't tell us what you had been doing. Tell us what was said.

Q. What did you say and what did they say? A. Well, part of the reason they came was to get——

The Court: No, you must not tell us the reason. Tell us what the conversation was.

Q. Did they tell you the reason they came? A. Yes. They came to get the money.

2484 Q. Is that what they said? A. Yes, they came to get the money; that we owed them some money.

Q. Now tell us the whole conversation. A. And then we went into the matter of costing us so much to unload the trucks; and I took him over to a friend of mine's house and arranged to get the money we owed him; then we talked over getting the trucks unloaded at a better rate, and we finally worked out a rate of four and a half——

Mr. Boudin: I object to that as calling for a conclusion

The Court: Yes, sustained.

Q. Did you show him anything when you were there?

Mr. Boudin: I object to that as immaterial.

The Court: He may state that, if he showed him anything.

Mr. Boudin: Exception.

A. Well, I can't say——

Q. Did you show them your books? A. No, we didn't show them our books. 2486

Q. Did you discuss your finances? A. Yes, I discussed our finances with them.

Q. Now, what did you say on that subject?

Mr. Boudin: I object to that as immaterial.

The Court: Allowed.

Mr. Boudin: Exception.

A. What was that question?

Q. What did you say on the subject of your finances? A. We told them that it was costing us so much that it was breaking us; we had a terrible time paying it; they could see we were having a terrible time paying them the money; and, why, they were willing to discuss lower rates then. 2487

So we went over to a friend of mine's house and we discussed lower rates and we worked out a different rate.

Q. Tell us what you said and what did they say? A. They said they were only allowed to charge the union scale; that they were not allowed to charge anything else. However, he could see we could not pay what it cost us, so that they were willing to work out something if we would keep it secret. And we worked out a secret agreement where they were to get a minimum wage of——

Mr. Boudin: I object to that as calling for a conclusion and move to strike out the answer.

The Court: Sustained.

You must not tell us what you worked out, because the jury are going to determine whether anything was worked out. You tell us what was said, but not about any change, if there was any change. You tell us what was said, and from what you tell us, then the jury can determine what, if anything, was worked out. But you are now usurping the function of the jury when you tell us what was worked out or what was arranged, if anything was arranged. Now give us the conversation.

2489

The Witness: I can't tell it to you word for word. It is too long ago.

The Court: You don't have to give it to us word for word, but you can tell us what somebody said to you and what you said to somebody else.

The Witness: Well, they wanted some money. We owed them some money.

By the Court.

Q. Did somebody say that? A. Cahill and Murray told me that.

Q. All right. Mr. Murray said they wanted some money? A. Yes, sir; they were there to get the money.

2490 Q. All right. Now, when Mr. Cahill said they were there to get the money, what did you say? A. That I would get it for them.

Q. And did you get it for them? A. Yes, sir.

Q. And before you got it for them was there any further conversation? A. Yes, sir. Then before I got the money we discussed other arrangements of pay——

Q. What did you say? You see, when you tell us that you discussed other arrangements, that is a conclusion. What was discussed? A. A different rate of paying them.

Q. What did anyone say to you and what did you say to them? What was said about a rate, if anything? A. Well, I started to tell you we worked out a different rate between us.

Q. No, I don't want you to tell me that you worked out anything. I want you to tell me what was said, and then it can be determined here what you worked out. You could not work out anything without talking about it, could you? A. No.

Q. Now, all right, tell us what you did in the way of conversation. A. I can't remember everything that was said. It is impossible for me to.

Q. I don't expect you to remember every word. Tell us 2492
as far as you can tell us what was said. A. I told him we could not pay what we had been paying; it was breaking us up; we could not keep it up; it was a small company.

Q. Did you tell anybody what you could pay? A. No. They told us what they would take.

Q. Well, what did they say? A. They said they would work out a different arrangement, and they did, and they told us how much it was.

Q. What did they tell you it was? A. It was a minimum of $40 a week, or $4 and a half for a small truck, $5 and a half for a large truck up to $40. If we had enough trucks to pay $40 a week, we paid them; if we did not have enough trucks, we paid it anyhow.

Q. Who said that? A. Mr. Cahill and Mr. Murray both 2493
said it.

Q. In the presence of each other? A. In the presence of each other and in the presence of a Mr. Shipley.

Q. What did you say? A. I told him that would be a much better arrangement than we had and we would do the best we could to keep our end of it up.

Q. And what did they say? A. They asked me to get in touch, or suggested that we get in touch with Mr. Shipley, who was another shipper, who had another freight line——

By Mr. Marks.

Q. What was that name? A. Pardon me, that was the wrong name. A Mr. Spackman.

Q. What line was he associated with? A. He runs the Eastern States run; in substantially the same business as I was.

Q. Out of Uniontown? A. Yes.

Q. To New York City? A. Yes, sir.

Q. Now, go ahead. A. And Mr. Spackman had been talking to me about a partnership——

Mr. Bondin: I object to that.

2495

Q. No, don't tell us that, Mr. Beatty. Did you get in touch with Mr. Spackman? A. Yes, I called Mr. Spackman and he came right around to meet us at the Lafayette Hotel in Peters Street in Uniontown.

Q. And who was there? You and Spackman and Cahill and Murray? A. I, Mr. Spackman, Mr. Cahill and this Murray.

Q. Do you remember how long you were together? A. I imagine close to two hours. We had supper and a few drinks together.

Q. Now, you had a conversation during that meeting, didn't you? A. Yes, sir.

Q. Can you tell us the substance of that conversation?

2496 A. They explained to him the rate they had worked out for me, and he said that he would like to go along.

Q. What else did they say to him? A. And they told him that they could not do anything until he signed a contract He had not signed a contract with 807 as yet.

Q. Was anything said about his trucks in New York City? A. Yes, they told him his trucks could not come in until he signed a contract.

Mr. Boudin: I object to that as immaterial.

The Court: Overruled.

Mr. Marks: May we have the answer read?

The Court: Yes, if the stenographer has it, I don't know.

(Answer read.)

Q. Now, what else was said?

Mr. Boudin: Same objection.

The Court: Overruled.

Mr. Boudin: Exception.

A. Then Mr. Spackman wanted to see their union books, 2498
and Cahill showed him his, and Murray said it wasn't necessary, and he showed him some letter or something of identification.

Q. But Murray did not show him a union book? A. No, Murray did not show him a union book.

Q. Now, do you remember any further discussion with Mr. Spackman in your presence? A. No. After we talked it over and they gave him the gist of our arrangement, after we had eaten supper—we all ate supper together—I took them home; they were tired; and Mr. Spackman left.

Q. Now, do you remember testifying before the grand jury in this case?

Mr. Boudin: Objected to as immaterial. 2499

The Court: Overruled.

Mr. Boudin: Exception.

A. Yes, sir.

Q. When was that? A. I thing that was in early April or latter part of February or March.

Q. When? A. In April, I think; I am not sure.

Q. Of 1938? A. It was in 1938, yes.

Q. Did you see Cahill after that? A. Yes, sir.

Q. Do you remember how long after? A. I think I was in town three or four days there, and I seen him three or four times while I was in town.

Q. Do you remember one conversation with Cahill at the Beach Transportation Company? A. Yes, I talked to him later——

Mr. Boudin: One moment. It should be yes or no.

Mr. Marks: Well, if Mr. Boudin wishes to object——

Mr. Boudin: I say the answer should be yes or no.

The Court: Counsel will make his objection if he desires to object; and is there any reason why you
2501 cannot rise when you wish to make an objection?

Mr. Boudin: There isn't any reason, your Honor, except that it is unpleasant to bob up continually.

The Court: Well, it is at least respectful, isn't it?

Mr. Boudin: Well, if your Honor prefers it I will do so.

The Court: No, it is not that I prefer it. Don't you understand from your practice that it is the custom expected of lawyers to do so, and that they may be relieved of that custom upon application to the Court if there is any reason to do so?

Mr. Boudin: Well, if your Honor please, I have seen other counsel do it——

The Court: Never mind about other counsel. You
2502 have done it continuously through this trial. You haven't risen more than a half a dozen times in the eight days that we have been here.

Mr. Boudin: I am sorry if your Honor feels offended.

The Court: I am not offended.

Mr. Boudin: I shall rise each time and make an objection.

The Court: I am not a bit offended, but I do like to see lawyers observe the procedure that is ordinarily carried on in courts of justice, unless there is some reason not to do it, and I bring it up at this time because I have heretofore said that when counsel have something to say they can address the Court, and they may make their objections, but they are not to comment on the testimony of the witnesses.

Now, if you have any objection to this question you may state it.

Read the question.

(Question read.) 2504

The Court: Is there an objection?

(No response.)

The Court: I hear none. The witness may answer the question.

Mr. Boudin: If your Honor will permit me, there is no objection to the question——

The Court: If there is no objection, that ends it.

Mr. Boudin: I understood the answer was given——

The Court: If you have no objection there is nothing more to be said. Please take your seat. The witness will answer the question and I direct him to answer yes or no.

The Witness: Yes.

The Court: Proceed. 2505

*

Q. Can you tell us the approximate date of that conversation? A. That was in early May.

Q. About how long after you appeared before the grand jury? A. I imagine a month; a month and a half; something like that.

Q. Now will you tell us the conversation?

Mr. Boudin: Objected to.

The Court: Overruled.

Mr. Boudin: Exception.

The Court: I will make the same direction to the jury now that I made when the witness Goddard was on the stand with relation to a question put to him as to a conversation that he had with the defendant Weinheimer before and after he appeared before the Grand Jury; and that is that the testimony is admissible as against the defendant Cahill and it is not admissible as against any other defendant in this case unless the jury find there
2507 was a conspiracy; that this statement of Cahill was made while the conspiracy continued; that it was made in furtherance of the conspiracy, and it will only then be effective as to any defendants whom the jury find who have been in the conspiracy. You may answer.

Q. Will you now give us that conversation, Mr. Beatty? A. That is the conversation I had on Beach Street—oh, it is not Beach Street—it is Beach Transportation Company. It is, I think, on Washington Street, I am not sure.

Q. Yes. Now, what was that conversation? A. I had quite a long conversation with Mr. Cahill. We wanted to fire him.

Q. What did you tell him?

2508

Mr. Boudin: If your Honor please, I object to that question.

The Court: Which question?

Mr. Boudin: The question "What did you tell him?"

The Court: Overruled.

Mr. Boudin: Exception.

Q. What did you tell him? A. What I told Cahill?
Q Yes. A. I told him I wanted to fire him.

The Court: You wanted to what?
The Witness: Fire him.

Q. What else did you tell him?

Mr. Boudin: If your Honor please, I move to strike out that answer.
The Court: Motion denied.
Mr. Boudin: Exception.

2510 A. I told him I wanted to fire him because he wrecked one of our trucks, and I further told him that taking our money like that was just like robbing us, just the same as highway robbery; and I went——
Q. What else did you say in that conversation?

Mr. Boudin: If your Honor please, before proceeding with the next question, I move to strike out the last answer.
The Court: Denied.
Mr. Boudin: Exception.

A. Well, that is the main part of what I said.

The Court: What did he say?
2511 The Witness: He said that I could not fire him; that he was the steward on the job.

Q. What else did he say? A. He mainly told me that I could not fire him; that there was no way of getting rid of him, and I explained to him how I did not hire him——
Q. How what? A. How I did not hire him.

Mr. Boudin: If your Honor please, I object to further statements as conclusions.

The Court: Overruled. He may state what was said without stating his conclusions.

Q. What else did you say, Mr. Beatty? A. I said that I did not hire him, but I wanted to get rid of him, and I wanted to fire him because he had wrecked a truck of ours.

Q. Did you tell him anything else about the wrecking of the truck? A. Yes. I thought he wrecked it because we testified before the Grand Jury; some of our boys and
2513 I testified.

Q. What did he say to that? A. He said it was an accident; he did not do it on purpose; that the fellow pulled out in front of him and he could not avoid it.

Q. What else did he say? A. He said that the only way I could fire him would be to go before the union and get permission from them.

Q. Now, did Cahill give you anything at that meeting? A. He had some checks of ours that Mr. Shipley, who had since become the secretary or the treasurer of the company—he got mad and stamped on them "For protection against racketeering," and sent them to Cahill.

The Court: Strike that out. That is not part of any conversation.

2514

Q. My question was did he give you anything at that meeting. A. The only thing I can remember is the checks because he could not get them cashed.

The Court: Who gave you the checks?

The Witness: Cahill.

Mr. Marks: Will you mark these for identification?

(Marked Government's Exhibits 16-A and 16-B for Identification.)

Q. I show you now Government's Exhibits 16-A and 16-B for Identification and I ask you if you have ever seen these before? A. Yes, sir; I have seen them before.

Q. When and where did you see them for the first time? A. I think the first time I seen them was in New York City.

Q. And who gave them to you? A. Mr. Cahill.

Q. Was that at the Beach Transportation Company? A. It was on the street near the Beach Transportation Company.

2516

Q. Do you recognize the signatures on those checks? A. Yes, sir; Thelma Beatty, secretary; M. Bowman Shipley, treasurer. I recognize the signatures.

Q. Is Thelma Beatty your wife? A. Yes, sir.

Mr. Marks: I offer these in evidence.

The Court: Did I correctly understand that it was Mr. Shipley who did something to these checks?

The Witness: Yes, sir.

The Court: The jury will disregard that.

Mr. Marks: I have now offered the checks in evidence, your Honor.

The Court: Is there an objection?

Mr. Maguire: No.

The Court: Received. 2517

(Government's Exhibits 16-A and 16-B for Identification received in evidence.)

Mr. Marks: May I read these checks to the jury?

The Court: Yes.

(Mr. Marks read Government's Exhibits 16-A and 16-B to the jury.)

Q. Now, Mr. Beatty, when Cahill gave you Government's Exhibits 16-A and 16-B in evidence, were they in the same condition as they are now? A. No, sir.

Q. When he gave them to you was there anything on those checks which is not now on them? A. It had typewriting——

Q. Yes or no?

The Court: Just yes or no.

A. Yes.

2519 Mr. Boudin: I object. That is the thing that your Honor has ordered the jury to disregard.

Mr. Marks: May I finish my question, your Honor?

The Court: Yes, if you have not finished.

Q What did you see on those checks then that is not on them now?

Mr. Boudin: That is the same question that I thought was finished. Now it is objected to as immaterial, irrelevant and incompetent, and I take it that that is the matter that your Honor told the jury to disregard.

The Court: Let me see the checks.

2520 (Checks handed to the Court.)

The Court: Now, let us hear the question.

(Question read.)

The Court: At the time they were handed to him by Cahill?

Mr. Marks: By Cahill.

The Court: Overruled.

Mr. Boudin: Exception.

The Witness: May I answer?

Q. Yes. A. It said, "For protection against racketeering."

Q. Now, can you indicate where on each of these exhibits those words appear? A. Right over where it says (indicating)——

Q. That is, on Government's Exhibit 16-B? A. Yes, and in the same place on the other check.

Q. That is, in the upper left-hand corner of both exhibits? A. It was typewritten in the upper left-hand corner.

Mr. Marks: May I show this to the jury, your Honor?

2522

By the Court.

Q. Were these words on the checks at the time Cahill handed them to you? A. Yes, sir.

Q. Do you know who removed those words? A. I did.

The Court: All right.

By Mr. Marks.

Q. Did you have any conversation with Mr. Cahill about removing those words? A. Yes, sir. He said he refused them that way.

Q. He said what? A. He said he could not cash them that way; he could not take them with that on it. 2523

Q. What did you next do with the checks? A. I took and put a sticker on them to cover that up, and he refused them, or the bank refused them that way; and then I took an eraser and took the typewritten words off.

Q. Do you remember whether there was any more conversation with Cahill at that time and place; that is, the Beach Transportation Company on the day that you have mentioned? A. As I told him, I wanted to fire him. I

wanted him to go down to the union hall, but he could not go then or could not go down to the union hall, so I went by myself, and that is the main part of the conversation we had that day. I think that is nearly all.

Q. Where did you go after that meeting with Cahill? A. I went down to the union hall.

Q. And did you see someone there? A. Yes, I seen someone there.

Q. Do you know whom you saw? A. No, sir.

Q. Was it in the same place that you saw Brennan? A. It was the same place that I met Mr. Brennan.

Q. Did you have a conversation with those present
2525 there? A. Yes, sir; I told them that we——

Mr. Boudin: One moment.

The Court: No. Strike out after "Yes, sir."

Q. What was that conversation?

Mr. Boudin: Objected to.

The Court: Sustained.

Q. Now, after that conversation in the union hall, did you see anyone else? A. In the union hall, do you mean?

Q. No, later on, after you left. A. Later on I seen Cahill——

Mr. Boudin: One moment. I object; the ques-
tion calls for a yes or no answer.
2526 The Court: Overruled.

By the Court.

Q. Did you see anyone? A. Yes.

By Mr. Marks.

Q. Whom did you see after that? A. Later on I seen Cahill again.

Q And what was your conversation, if any, with him? A. He told me that we had an appointment with a delegate over in Brooklyn for the following day.

Q. Did he mention the name of the delegate? A. Yes, sir; Mr. Campbell.

Q. Is there any part of the conversation that you have not told us? A. Well, that was—the appointment was to try to straighten out our trouble with the union.

Mr. Boudin: One moment, if your Honor please.

The Court: Yes. Strike out the purpose of the appointment. The question was whether you told all the conversation.

The Witness: Yes. 2528

Q. Did you see anyone the next day? A. Yes, sir.

Q. Whom? A. I saw Cahill and Murray over in Brooklyn, and we waited and seen Mr. Campbell——

Q How long did you wait?

Mr. Boudin: I object to that as immaterial.

The Court: Sustained.

Mr. Marks: If your Honor please, may I be heard for a moment on that point?

The Court: Well, he saw him, didn't he?

Mr. Marks: Yes, sir; but on the question of how long he waited, may I be heard?

The Court: What is the materiality of it?

Mr. Marks: Just this, your Honor, that I think 2529 our proof will show that there was a concerted effort on the part of the delegates to keep operators waiting whenever the operator meant to see the delegate. This witness has indicated one such occurrence already, and I think there will be other instances of the same thing.

The Court: Well, I will sustain the objection for the present.

Q. Now, where was this meeting? A. It was on Atlantic Avenue in Brooklyn.

Q. On the street? A. It was on the street, yes, sir.

Q. And who was present? A. Mr. Cahill, this Mr. Murray and Jacob Smell.

Q. Who was Jacob Smell? A. He was one of the B. & B.'s drivers.

Q. And who else? A. Mr. Campbell.

Q. Will you stand up, Mr. Beatty, and tell us if you see Mr. Campbell in court. A. (Standing) I think this gentleman over there (indicating) is the one I talked to; the one below down back of the men in front.

2531 Q. Which row? A. The second one back, the third one from that end (indicating).

Q. From your left? A. Yes.

Mr. Marks: May the clerk call the name of William Campbell?

The Court: Yes.

The Clerk: William Campbell.

(A man stood up.)

Q. Is the man that is now standing— A. That is the gentleman we talked to.

Q. All right, thank you. Now, will you tell us the conversation that took place on that street in Brooklyn? A. Well, we talked about me——

2532 Q. Just tell us what you said and what the others said. A. Well, I said that I wanted to fire Cahill because he had wrecked one of our trucks deliberately, and Cahill told him that it was an accident, that he did not wreck it on purpose; and Cahill told him that he had had a lot of trouble with us; he could not get his money off of us, and that we had testified before the Grand Jury, and that he had always had trouble with us; that we had trouble paying, and that we had trouble making our checks good

that we had been giving him lately, but that we were up to date then; and I explained to Mr. Campbell——

Mr. Boudin: I object to that, if your Honor please.

The Court: Yes.

Q. What did you say to Mr. Campbell? A. I told Mr. Campbell that we had trouble raising the money. It cost us so much to come into New York, and we made such a small profit that we had a hard time raising that much money.

Q. Yes? A. And that we had been shut down so much by the union that we had lost nearly all of our business. 2534
So we talked a long while—I can't remember everything——

Q. Yes? A. And he told me then——

Q. Who told you? A. Mr. Campbell told me that our financial affairs were up to date; that Cahill told him that he had his money up to date then; that I couldn't fire him; that I had to keep him on as steward; that maybe if he wrecked another truck, maybe I could fire him then. I explained to him that I did not hire him——

Mr. Boudin: I object to the answer beginning with "I explained to him."

The Court: Yes. Strike it out.

2535

Q. What did you say to him? A. I told him I did not hire him, Cahill; that I wanted to fire him and get rid of him; that he cost us so much we could not keep our business going; and after we had talked for a long while he told me——

Q. Campbell told you? A. Yes. He told me that things would be all right; that we would be back where we started from; that we would have to pay the full scale; that he

would not countenance any under-the-hat arrangements and no secret agreements and everything had to be above board.

Q. What did you tell him then? A. I told him that being our competition had the low rates, that that would automatically put us out of business; that we could not come into New York.

Q. What did he say? A. He said he could not help it if we had had trouble, and the only thing we could pay was full scale; that he would fix it up with Richmond Radiator that we could haul again, but that we would have to pay the full scale.

2537 Q. And after that did you pay the full scale? A. Yes. We did not make only a few trips after that, and we paid the full amount.

Q. And you went out of business? A. Shortly after that we went out of business.

Q. When? A. It was around in June, the first part of June.

Mr. Marks: That is all.

The Court: Well, we will recess at this point until tomorrow morning at half-past ten.

(Adjourned to April 24, 1940, at 10.30 A. M.)

New York, April 24, 1940,
10.30 A. M.

2538 TRIAL RESUMED.

GEORGE BEATTY resumed the stand.

Cross-examination by Mr. Boudin.

Q. Mr. Beatty, how long have you been in the transportation business? A. I have been in the transportation business since 1933.

Q. Where was your first place of business? A. Uniontown, Pennsylvania.

Q. Was that when B. & B. Transportation Company was organized? A. Yes, I organized B. & B. Transportation Company.

Q. Who else was with you in business at that time? A. My wife.

Q. Anybody else? A. We had to have three organizers, but I always ran the business. I had the whole business myself.

Q. You mean you managed the business? A. I was president and manager.

Q. Did you have any partner at the time? A. No.

Q. When did you first get a partner into the business? A. I imagine it was in the fall of 1937. 2540

Q. What was his name? A. I know his name very well, but I can't think of it at the moment.

Q. How long has he been your partner? A. What is it?

Q. How long was he your partner? A. Just about two months.

Q. You don't remember his name? A. I can't think of it. I forget names.

Q. Is he a Uniontown man? A. Little California, near Uniontown.

Q. Still lives there? A. I couldn't tell you.

Q. You don't see him any more? A. No.

Q. Well, try to recall his name. A. (No answer.)

Q. Well—— A. I can't think of it.

The Court: You can come back to that. He may think of it. 2541

The Witness: I will. It is very peculiar but I can't remember names at times.

Q. Did he put any money into the business?

Mr. Cahill: Objected to as immaterial.

The Court: Yes or no.

A. No.

Q. Now, when in 1937 did he come into the business? A. I can't remember the exact date.

Q. When about? A. I imagine along about October.

Q. When did he leave the business? A. In November.

Q. So that he was in the business about a month? A. Yes, about two months. A month and a half or two months. Not very long, it was.

Q. Did he take any money out of the business when he left it?

Mr. Cahill: I object to it as immaterial.

The Court: Yes or no. When he left.

2543 A. No, he didn't take any money out.

Q. Now, who was your next partner in the business? A. Mr. Morgan Shipley was going to buy a one-quarter interest.

Q. When did he come into the business? A. In the latter part of November or first part of December.

Q. You mean about the time that the other man left? A. That is right.

Q. Did Mr. Shipley put any money into the business?

Mr. Cahill: Objected to as immaterial.

The Court: Yes or no.

A. Yes.

2544 Q. How much?

Mr. Cahill: Objected to as immaterial.

The Court: Sustained.

Mr. Boudin: Exception.

Q. Now, how long did Mr. Shipley remain in the business? A. Up until the time we broke up.

Q. When was that? A. That was in the last part of May or first part of June. It was the first part of June.

Q. Was it 1938? A. That is right, 1938.

Q. Did he take any money out of the business when he left?

Mr. Cahill: I press my objection.

The Court: Yes or no.

A. No.

Q. Did the business go into bankruptcy? A. No.

Q. Were its affairs wound up in any court? A. No.

Q. Sure about that? A. Yes, sir.

Q. What? A. I said yes, sir, I never wound up in any court.

Q. Were there any proceedings in any court in connection with the dissolution or winding up of the business or its affairs? 2546

Mr. Cahill: I press my objection that it is immaterial.

The Court: Yes or no.

A. No, sir.

Q. Have you got the books of the company? The business books? A. We have some few of the books left, yes.

Q. Have you got them here? A. No.

Q. Where are they? A. There are some few in Bound Brook.

Q. Are they available for bringing here if we would ask you to? 2547

Mr. Cahill: Objected to as improper in form.

The Court: I will allow it. Yes or no.

A. Yes.

Mr. Boudin: Well, through the Court we ask the witness——

2548 *George Beatty—For Government—Cross.*

Mr. Cahill: If your Honor please, that is what I object to. There is a proper method of doing that.

The Court: Sustained.

Mr. Boudin: Exception.

Q. Now, at this time when you signed the contract which is in evidence as Government's Exhibit 15——

Mr. Boudin: May I see that?

(Paper handed to Mr. Boudin.)

Q. Was Mr. Shipley a partner in your business? A. He was—he acted as treasurer——

2549 Q. No. Yes or no? A. Yes.

Q. And what was his official position with your company? A. Treasurer.

Q. How many trucks was your company then operating on the New York run? A. When we had our trouble, you mean, or when we——

Q. I asked you, at the time when this contract was signed. A. When the contract was signed we was operating about 20 trucks.

Q. On the New York run? A. That is right.

Q. Did you have any trucks running on other runs?

Mr. Cahill: Objected to as immaterial; not within the scope of the direct.

2550 The Court: Yes or no.

The Witness: Yes.

Q. You had quite a large business? A. We were getting a nice business at the time.

Q. And how many trucks did you own? A. We owned six pieces of equipment. That is, B. & B. Transportation.

Q. What does six pieces of equipment mean? A. A tractor is one piece; a trailer is another piece.

Q. I see. And how many of those pieces, those six pieces, were trailers? A. Two trailers.

Q. You had four tractors and two trailers? A. Three trailers, two tractors and one straight truck.

Q. What is a straight truck? A. A van; what we call a straight truck.

Q. You mean running without a trailer? A. Yes, one 4-wheel truck.

Q. Not built for being attached to a trailer or having a trailer attached to it; is that what you mean? A. That is right.

Q. How often were you in the habit of coming to New York about that time, say, between November, 1937, and January, 1938? A. Oh, it varied greatly. There was no set time. Some days we were five, six, eight trucks in New York City; other days two or three. 2552

Q. And how often would you personally come to New York? A. Every two weeks to every two months.

Q. Where was your New York office at that time? A. At that time we had an office on West Street.

Q. What number West Street? A. I can't remember. It was around 350, or something like that.

Q. How long did you have that office, all told? A. Six or eight months, if I remember right.

Q. And how often had you been in that office? A. Just when I came to New York.

Q. Well, how many times would you say that was during that period of six or eight months? A. I could not say. 2553

Q. You don't remember the number? A. No, I couldn't begin to remember the number.

Q. Do you remember what side of the street it was? A. As you go uptown it would be on the right side of the street.

Q. You mean on the east side of the street? A. Going from the Battery uptown it would be on the right side of the street.

Q. What did that consist of? A. Just office room with another freight company.

Q. You mean just one room? You were sharing one room with another company? A. That is right. I just had a desk and a telephone in there; that was all I had.

Q. And who was in charge of that business in January, 1938? A. In January Mr. Winterhalter was in charge of it.

Q. And how long had he been in charge before this contract, Government's Exhibit 15, was signed? A. Just two or three weeks to a month. Not very long.

Q. And who had been in charge of that before that, if anybody? A. No one.

Q. You mean the office took care of itself? A. That is right.

2555 Q. Except for such occasional visits as you paid to it? A. There was someone there with the other freight company, and they took any telephone calls that we had.

Q. Well, none of the other officials of your company ever visited New York or took charge of that office at any time? A. No.

Q. Of the 20 trucks that you were running to New York, or about 20 trucks that you were running to New York, in January, 1938, about 16 were hired by you from owners? A. That is right.

Q. And the hiring included the driver who was driving it? A. That is right. That is correct. We hired the truck and the driver.

Q. Now, just when about was it that Cahill came into your employment, so far as you can place it now, bearing
2556 in mind the date of the contract, which is January 27, 1938?

Mr. Marks: I object to the question as an improper characterization, calling for a conclusion. "came into your employ."

The Court: Let me hear the question.

(Question read.)

The Court: I will allow it.

A. It was right around the first of February.

Q. And he remained in your employ until when? A. Until we broke up and quit business.

Q. You mean to the end of May, 1938? A. That is correct.

Q. Would you say that he was in your employ on May 31, 1938? A. He was the man that handled all our local——

The Court: No, the question is——

The Witness: Yes, he was in our employ.

The Court: On May 31st, that was the question.

The Witness: Yes.

Mr. Boudin: I understood the witness to say "yes." I am not sure. 2558

Q. Is that correct? A. Yes.

Q. Now, during this period that Cahill was in your employ, who else was working for you so far as the New York end is concerned.

Mr. Cahill: If your Honor pleases, I press the objection on the characterization "in your employ" as assuming an ultimate fact.

The Court: I will allow it.

A. There was a George Maggio and some other man, but I can't remember the names.

Q. What was your answer? 2559

The Court: The stenographer will repeat it.

(Answer read.)

Q. And how often did you visit New York City during that period of time; that is, the three months that he was in your employ? A. I can't remember. Possibly four times.

Q. Now, you testified that on a certain occasion Cahill came to see you at Uniontown, Pennsylvania? A. Yes.

Q. Can you place the time of that visit? A. Not exactly, but it was around in March, the first of March I think it was; around in March, but I can't place it exactly.

Q. Was it the first part of March? A. As near as I can remember, it was in the first part of March.

Q. And had you been in New York City between January 27th and the time of the visit that Cahill paid to you at Uniontown? A. No, I don't believe that I had.

Q. You had not been during that entire period of a month or a little over, is that correct? A. I can't remember, but I don't believe that I was.

Q. Now, when Cahill got to Uniontown, you say he telephoned to you? A. That is right,

2561 Q. That is correct? A. Yes.

Q. And where did you meet him? A. I can't remember.

Q. Well, try to recall. A. I can't remember. I tried to recall yesterday.

Q. Well, try to visualize the meeting so that you might be able to state the place where you met. A. Well, I can't remember. It may have been at Mr. Shipley's house. We had our office there then.

Q. Your office at the time was in Mr. Shipley's house? A. That is correct.

Q. And that was the only office you had in Uniontown? A. At that time.

Q. Well, did you ever have any office? A. Yes, I had another office before I moved over to Mr. Shipley's.

2562 Q. Now, where was that office? A. It was on Fayette Street, Uniontown.

Q. Was that a separate office or was that in connection with somebody's house? A. No, that was a garage. I had an office in a garage.

Q. Now, did you give up the garage when Mr. Shipley came into the business, or you just moved your office? A. I moved the office out already and given up the garage some time before that.

Q. When did you give up the garage? A. I can't remember. It was gradual, over a long period of time. The trucking business just took so much of my time, and I neglected the garage until I gave it up entirely.

Q. The garage was a separate business; it was not part of your trucking business? A. At one time it was a separate business; then we were using the whole facilities for the trucking business at the last.

Q. Then you gave up the garage? A. That is right.

Q. You moved your office to Mr. Shipley's? A. That is right.

Q. Now, on this occasion of the visit of Cahill to Uniontown, had you met him or did you meet him in a number of places, if you can recall? A. In Uniontown? 2564

Q. Yes. A. I can only remember taking him to Shipley's. I either met him at Shipley's or took him into Shipley's.

Q. Now, when you say you met him at Shipley's, you mean that you came to Shipley's and found him and his companion there? A. Possibly he telephoned me and I was at the office back of Shipley's, and he met us over there. I can't remember where I met him in Uniontown.

Q. Have you any visual memory of the occurrence? A. I am afraid not.

Q. Now, what time of the day was it when you first saw him in Uniontown? A. It seems to me it was around dinner time, in the early part of the afternoon.

Q. And how long did he remain in Uniontown? A. He remained in Uniontown until that evening. 2565

Q. Did he stay overnight? A. He stayed at my house overnight.

Q. So he remained until the following day? A. Yes. He left my house the following day.

Q. What time of the day did he leave? A. The first thing in the morning.

Q. Now, was there any particular reason for his staying over that night in Uniontown? A. They were tired.

Q. You mean tired from the drive or tired from the conversation during the entire afternoon and evening? A. Well, they drove in from New York, just a long drive, and then they spent the day——

Q. How long a drive is it? A. 400 miles.

Q. Isn't it a little over 400 miles? A. It is a little over 400 miles.

Q. Would you say it is 425 miles? A. Just around 420. There are different ways to go. It is approximately 400 miles.

Q. Now, there were several conversations that you had with Cahill that day; I mean there was not one continu-
2567 ous conversation from the time you met him until the time you went to bed, I take it, or were you together all the time? A. We were together all the time.

Q. From the time you met until they went to bed in your house? A. Yes, sir.

Q. Now, how many hours would you say that was? A. Possibly seven or eight hours, I expect.

Q. What time did you break up at the Lafayette Hotel? A. I imagine around 7 o'clock.

Q. And you went immediately to your house? A. Yes. I took him to my house.

Q. And he and his companion went to bed immediately? A. That is right.

Q. Before you went to the Lafayette Hotel you had telephoned to Mr. Spackman? A. That is correct.

2568 Q. How long was that after you first met Cahill? A. I can't remember. I suppose three or four hours. Maybe five. I can't remember.

Q. How long were you and Spackman and Cahill together? A. An hour and a half to two hours.

Q. That was at the Lafayette Hotel? A. That was at the Lafayette Hotel.

Q. Did Spackman meet you at the Lafayette Hotel? A. Yes, he met me at the Lafayette Hotel.

Q. You and Cahill were together? A. That is right.

Q. Spackman met you at the Lafayette Hotel after you telephoned to him? A. Yes. I think I telephoned him from the Lafayette, but I can't remember where I telephoned him from.

Q. Now, before you got to the Lafayette Hotel did you spend all the time in Mr. Shipley's? A. I think I spent all the time after the boys got together with them at Shipley's.

Q. How many hours would you say that was? A. Three or four hours at the very least.

Q. Now, their topic of conversation was their demand for money your company owed them, was it not? A. That 2570
is right.

Q. They said that that was what brought them to Uniontown? A. Yes, that was what brought them there.

Q. Do you know how much your company owed Mr. Cahill and his co-worker at that time? A. No, I can't remember.

Q. Well, about how much was it? A. I imagine it was close to $100.

Q. You mean a week's wages for two men? A. I think it was about a week's wages for two men.

Q. Are you sure it wasn't more than that? A. I don't believe it was much more than that, but it seems to me it was around $100.

Q. Well, did you have any difficulty in paying your wages to them before that week? A. I have had difficulty 2571
in paying them. It was about as much as $150 a week, and I had a terrible time raising it.

Mr. Boudin: I move to strike it out.

Mr. Cahill: It is responsive.

The Court: Motion denied.

Mr. Boudin: Exception. I respectfully except. I submit the answer should be yes or no.

The Court: Motion denied.

Mr. Boudin: Exception.

Q. Had you had any difficulty in paying other people's wages? A. Yes.

Q. And who were those people?

Mr. Cahill: Objected to as immaterial, your Honor.

The Court: Overruled.

Q. What is your answer? A. I would like to hear the question.

2573

The Court: Repeat the question, Mr. Stenographer.

Q. (Read.) A. I was having difficulty paying everything I owed then.

Q. When did your difficulties begin as far as time is concerned, by years, months and days? A. I can't remember.

Q. Isn't it a fact that your difficulties began some time in the fall of 1937? A. I hadn't been too prosperous during the summer and I just got a good start in the fall.

Q. In fact, your difficulties began long before the fall of 1937? That is true? A. I have never been very prosperous.

2574

Q. That is correct? A. That is correct.

Q. But the particular difficulties began early in 1937? Would you place it at that date? A. I can't remember exactly.

Q. Well, would you say that that was not? A. No. I have never been very prosperous. I have had trouble paying my bills for a good while.

Q. How long a while would you say before the fall of 1937 had you had trouble in paying your bills?

Mr. Cahill: If your Honor please, I press my objection that this is immaterial. We are not trying the question of the economic success or failure of this witness.

The Court: I will allow the question.

A. What is the question?

The Court: The stenographer will read the question.

Q. (Read.) A. For about a year, I think.

Q. And those were general bills that you owed to merchants, for rent, similar things? A. That is right. 2576

Q. And also to your employes? A. No. I always paid my employes' wages.

Q. Promptly? A. Not always promptly, but satisfactory to them.

Mr. Boudin: I move to strike it out.

The Court: Denied.

Q. You mean you paid them ultimately? That is what you mean? A. Yes.

Q. You didn't pay them on time? A. No.

Q. Now, as a matter of fact, you had difficulties with the local union in Uniontown because of your failure to pay wages promptly and on time? A. No.

Mr. Cahill: I object to it as immaterial. 2577

The Court: He said no.

Mr. Cahill: Yes, but if your Honor please, I don't gauge my objection on what the answer may or may not be.

The Court: The witness may answer the question. The witness is permitted to answer the question. He has answered it and he said no.

The Witness: No.

Q. Are you sure that you had no difficulties with the local union in Uniontown? A. On a question of paying wages, no.

Q. Well, what other kinds of difficulties did you have with the local union?

Mr. Cahill: I object to it as immaterial.
The Court: Sustained.
Mr. Boudin: Exception.

Q. Do you know Mr. Burns, the business agent of the local union in Uniontown?

2579

Mr. Cahill: I press my objection.
The Court: He may answer yes or no.

A. Yes.

Q. Did you have difficulties that you and Mr. Burns discussed together?

Mr. Cahill: I press my objection.
The Court: Sustained.
Mr. Boudin: Exception.

Q. Now, as a matter of fact, Mr. Beatty, did you ever pay Cahill or Maggio on time their wages from the first day they came into your employ until they ceased to be in your employ?

2580

Mr. Marks: I object once again, your Honor, to the characterization of wages.
The Court: Overruled.

A. Yes.

Q. You mean yes that you did pay them on time? A. Yes.

Q. When was that? A. When they first started to work for me.

Q. You mean the first week you paid on time? A. The first several weeks, yes, sir.

Q. Several weeks? A. Yes, sir.

Q. How many weeks would you say "several" mean? A. I can't remember.

Q. Was it as many as three weeks? A. It was three or four weeks.

Q. Three or four weeks? A. I can't remember exactly.

Q. Let us get back again to the date of their visit to Uniontown. Wasn't that around the 1st of March? A. As near as I can remember it was the early part of March. 2582

Q. Wasn't it the very early part of March? Around the 1st of March? A. I can't remember exactly. I am sure it was the first part of March, but I couldn't begin to tell you when.

Q. Well, gauging it by the time they had been employed by you, wasn't it towards the end of the fourth week that they had been employed by you? A. I wouldn't place it so. I couldn't say.

Q. Would you say that it was not? A. I can't remember how long it was that they had been working there.

Q. Will you say now that that was the first difficulty they had with you about pay when they came to Uniontown? A. No, I can't remember.

Q. Is that the best answer you can make? A. Yes.

Q. Answer the question, please. A. Yes. I can't re- 2583 member exactly.

Q. Now let me refresh your recollection: Will you bring yourself back to the end of the second week after Cahill and Maggio had been employed? That is to say, about the middle of February, 1938: Didn't you have difficulty at that time with them about pay?

Mr. Marks: I object to the question, your Honor. The witness testified on direct that he never hired these men.

The Court: Overruled.

A. I can't remember any trouble then.

Q. Would you say that there wasn't any at that time? A. No, there was no trouble then.

Q. You say now definitely that there wasn't any? A. I can't remember any trouble we had for a while after they worked.

Q. Well, search your memory and let us get somewhere. What is your memory?

2585

Mr. Cahill: I object, and I ask for an instruction to cease badgering the witness.

The Court: I call the attention of counsel to the fact that he may address his questions to the witness but he is not permitted to comment. Now this statement of yours, "Let us get somewhere" is improper and uncalled for, and I admonish you not to use that or any similar expression again.

Mr. Boudin: I respectfully except to your Honor's admonition, to your Honor's remark, as well as to your Honor's instruction.

The Court: Well, that you have a right to do and I think the stenographer has noted your exception.

2586 Proceed with your examination.

Mr. Boudin: Thank you.

The Court: And proceed in order.

Mr. Boudin: I respectfully except to your Honor's last remark.

The Court: Proceed.

Mr. Boudin: I am proceeding in order.

The Court: Proceed. No further comment between you and the Court.

Mr. Boudin: I am awaiting your Honor's order.

The Court: I have directed you to proceed.

Mr. Boudin: I shall proceed, and I respectfully except to your Honor's remark.

The Court: Go ahead.

Q. Now, Mr. Beatty, do you now remember how much you owed them when they came down to Uniontown? A. No, sir. As nearly as I can remember it was somewhere around $100.

Q. What was your method of paying them before that? A. By check.

Q. Have you got those checks? A. No. 2588

Q. Are they in your possession? A. No.

Q. What became of them? A. The Government has some of them, as many as we could find.

Mr. Boudin: If your Honor please, at this point I ask your Honor to direct the Government to hand me over those checks so I can use them in further examination.

The Court: I don't direct them. You may ask the Government for them.

Mr. Cahill: We would be glad to give Mr. Boudin those checks we have (handing checks to Mr. Boudin).

Mr. Boudin: Those are not the ones. You know that, Mr. Cahill. 2589

The Court: Now, just a moment. You are cross-examining this witness. You are not entering into any controversy with Mr. Cahill.

Mr. Boudin: Mr. Cahill was addressing me, or his assistant.

The Court: You addressed Mr. Cahill with reference to those checks.

Mr. Boudin: If your Honor please, I would like the record to show that Mr. Cahill or the Government said, "We would be glad to give you those checks," and they handed me something else.

The Court: Just a moment. That is already on the record.

Mr. Boudin: That they handed me something else?

The Court: Stop, right where you are.

Mr. Boudin: I am stopping right here.

The Court: The jury may take a recess.

(The jury left the court room.)

2591 The Court: Mr. Boudin, you step up here, please.

(Mr. Boudin steps up to bench.)

The Court: I want you to conduct your cross-examination. You asked me to direct the District Attorney to produce checks. I told you I would make no direction to the District Attorney. He is in charge of his case, but I told you you might ask the District Attorney for those checks. You did, and he handed you some checks. Now, if the District Attorney did not hand you the checks that you expected that he would, you could have either called the matter to his attention in a gentlemanly way or you could have called it to my attention if you did not receive the checks that you expected, but in the presence of the jury you addressed your-

2592 self to the District Attorney in a manner, indicating to me at least, that you felt that he had handed you something other than that which you called for. Now, he may have made a mistake. I don't know, but if he did, there should have been an opportunity afforded for rectification. Now I want to say to you that you are going to conduct yourself in the trial of this case as a lawyer is expected to and if you don't you will be dealt with summarily by me.

I am making this statement out of the presence of the jury. I have known you for a long time. I have always had a great deal of regard for you and particularly for your ability, and I feel that you have been too long in practice and have had too much experience not to observe a proper admonition when it is given to you by the Court. Now, do not let us have any further trouble here.

Mr. Boudin: Well, I would like to make a statement on the record. In the first place, I respectfully except to your Honor's statement that I had done anything that wasn't gentlemanly. That is the first time any such accusation has ever been made against me. I certainly behave like a gentleman. I am sometimes—well, somewhat irritated, but gentlemen get somewhat irritated sometimes. Your Honor gets somewhat irritated sometimes. 2594

The Court: Well, let us not have any discussion about that. We are going to try this case and we are not going to discuss anything outside of this case.

Mr. Boudin: I want to say to your Honor about the incident that they did hand me something——

The Court: I saw them hand you something.

Mr. Boudin: It was not what I asked for.

The Court: I said you are not going to enter into any controversy with me with regard to what I saw and heard. That is all on the record. 2595

Mr. Boudin: It is not on the record.

The Court: Pardon me. Please don't contradict me. Please take your place down there and I will bring the jury back as soon as I settle this question about the checks.

Mr. Boudin: Will your Honor permit me to make a suggestion; with all due deference to your Honor it still doesn't appear on the record what they showed me, and I want the record to show.

Mr. Cahill: May I have permission to put that on the record?

Mr. Boudin: So far it is not there.

Mr. Cahill: I ask the record to indicate that I asked permission to state in the presence of the jury, in the light of Mr. Boudin's remark, that I knew these were not Michael Cahill's checks——

Mr. Boudin: I didn't say that. I said they were not the checks I asked for, and I submit——

The Court: Will you let Mr. Cahill finish his statement?

Mr. Boudin: I am sorry I interrupted him, but
2597 he should not have made that statement.

The Court: Well, if you insist on being the judge here of what other people should do, I don't know that there is any way that I can enforce the regulation of this court except one that I would not take without some reluctance. Now, please don't interrupt Mr. Cahill until he is finished. Then you will have your opportunity.

Mr. Cahill: Mr. Boudin said, as I recall, that I knew these were not the checks. I call your Honor's attention to the fact that the checks handed to Mr. Boudin are made to the order, both of them, of Michael Cahill in the sum of $40, one bearing date April 30, 1938, and the other bearing date May 7, 1938, marked Exhibits 16-A and 16-B in evidence,
2598 and I ask your Honor to permit me in the presence of the jury to say that that is what I offered him.

Mr. Boudin: I have no objection to Mr. Cahill stating anything before the jury, provided I am permitted to make my statement too.

The Court: Well, I am not going to make any conditions. Are there any other checks that you have asked the District Attorney for that he has not produced?

Mr. Boudin: If your Honor please, the checks I asked for, the record will show, were the checks of the early part of the employment of Cahill and Maggio. The record shows that. I was examining him about checks before the visit to Uniontown.

The Court: Well, will you now answer my question?

Mr. Boudin: Are you addressing yourself to me? I can't see that far. I don't know whether your Honor knows it; I can't see where your Honor sits. I don't know whether your Honor addresses me or Mr. Cahill.

The Court: Well, Mr. Cahill hasn't given me any occasion to propound such an interrogatory that I am putting to you. Will you now answer my question? 2600

Mr. Boudin: Yes, sir.

The Court: Or do you want to make some further statement?

Mr. Boudin: No. I stated to your Honor that I was looking for those checks.

The Court: I heard that statement. Then I ask you if you would now answer my question?

Mr. Boudin: I said certainly.

The Court: All right. Now, I will repeat the question. Do you say that there are other checks that you have requested Mr. Cahill to produce which he hasn't produced? 2601

Mr. Boudin: I do say so. That is, I don't know whether he has them, but they said they had——

The Court: I didn't ask you whether he had them. I asked you if there are other checks that you requested that he has not produced.

Mr. Boudin: Yes, sir.

The Court: All right.

Mr. Cahill: Here, your Honor (indicating papers).

The Court: Now, are there other checks that you have that you haven't produced?

Mr. Cahill: They are in my hand. We just got them out of the file.

The Court: Will you now let Mr. Boudin have them.

Mr. Cahill: Yes, gladly.

The Court: And we will find out what they are.

Mr. Cahill: I might say, your Honor, there is a back to them, to the order of Michael Cahill and
2603 the other 807 men that the witness has mentioned. They constitute all that were turned over to the Government.

(Mr. Murray and Mr. Boudin examine checks).

The Court: All I want to know, Mr. Murray, is how many checks Mr. Cahill produces.

Mr. Murray: There appear to be eighteen, your Honor.

The Court: Now, do I understand——

Mr. Cahill: That is in addition to 16-A and 16-B.

The Court: That makes a total of twenty.

Mr. Cahill: Yes.

The Court: Do I understand that those are all the checks you had turned over to you by this wit-
2604 ness or the company of which he was an officer or by any other persons connected with the corporation?

Mr. Cahill: My associates so inform me.

The Court: All right. One moment. Are you making notes of those checks?

Mr. Boudin: We are going over them, if your Honor please.

The Court: Well, is somebody making notes of them?

Mr. Duff: I am, your Honor.

The Court: Well, just let me have the checks. An opportunity will be afforded forthwith to make notes, but I do not want to keep the jury out all this time.

Mr. Boudin: I was going to ask your Honor whether your Honor wanted us to do it now or——

The Court: No.

Mr. Boudin (continuing): —or whether some checks might——

The Court: When the jury returns the Court will make the statement which will be put on the record now and may be read to the jury: During 2606
the course of the examination of this witness in response to questions put to him by Mr. Boudin he stated that all of the checks that could be found of his company had been delivered to the District Attorney. Mr. Boudin asked that the Court direct the District Attorney to turn over the checks. The Court stated that it would not so direct, but that Mr. Boudin might ask the District Attorney, which he did. Thereupon Mr. Cahill presented to Mr. Boudin two checks which have already been marked in evidence, Exhibits 16-A and B, and the others were being gathered. It appears that there are nineteen additional checks in the possession of the District Attorney which he states represents all of the checks received by him, according to the assur- 2607
ance of his assistants from Mr. Beatty or Mr. Beatty's corporation. Those checks have been handed by Mr. Cahill to Mr. Boudin and they will be considered as Exhibit 17 for Identification, and your representative, Mr. Boudin, may continue with the noting of the dates of those checks and whatever other information they contain.

Mr. Boudin: Thank you.

The Court: Now, is there any objection to that statement?

Mr. Boudin: No objection on my part.

Mr. Cahill: No objection.

(Marked Government's Exhibit 17 for Identification.)

The Court: All right, let the jury be brought in.

(The jury returned to the court room.)

The Court: The stenographer will read to the jury a summary of what has transpired with respect to these checks during the absence of the jury.

(Statement referred to read to the jury.)

2609

By Mr. Boudin.

Q. Now, Mr. Beatty, after the visit to Uniontown by Cahill and a companion, you proceeded to pay Cahill and those who worked with him, members of Local 807, under a different arrangement than that represented by the contract which is in evidence as Government's Exhibit 15; is that correct? A. Yes, sir.

Q. Now, this arrangement that you had made with Cahill while he was in Uniontown was what is known as an under-the-hat arrangement, is that correct? A. Yes.

Q. It was supposed to be secret so far as the union was concerned? A. Yes.

2610 Q. It was in violation of your contract with the union?

Mr. Cahill: I object to that.

The Court: Sustained.

Mr. Boudin: Exception.

Q. Well, it was not in accordance with its terms?

Mr. Cahill: I object to that.

The Court: Sustained.

Mr. Boudin: Exception.

The Court: Mr. Boudin, we have the contract in evidence. Its terms, I assume, are explicit. You have the testimony of the witness. It will be for the jury rather than the witness to say whether the latter violates the former.

Mr. Boudin: Well, I should imagine on cross-examination I should be permitted to put the question in in that form.

The Court: No. I have ruled.

Mr. Boudin: All right. Exception.

Q. Now, after you made this arrangement in Uniontown did you have any further difficulties with Cahill or Cahill with you with respect to payment? A. Yes. 2612

Q. You mean the new scale of wages was not being paid promptly, that is correct, isn't it? A. No, that is not correct.

Q. That is not correct? A. No.

Q. Did you then continue to pay promptly? A. Yes.

Q. You are sure about that? A. Yes.

Q. You mean you paid weekly? A. Weekly, yes, sir.

Q. At the end of the week? A. At the end of the week.

Q. Did you have a set payday? A. Yes, we always mailed our checks on the last of the week.

Q. You mean at the end of the week you would mail a check covering that week's pay? A. Yes, sir.

Q. Now, when you say the end of the week, you mean around Saturday or was it on Friday? A. Saturday. 2613

Q. So that would get to New York on Monday? A. Yes.

Q. Now, I show you these two checks which are in evidence as Government's Exhibits 16-A and 16-B, dated respectively April 30th and May 7th, 1938, as to which you had been examined by the Government, and I ask you when you first saw them and whether you first saw them together or separately? A. The first memory I have of

those checks was when Mr. Cahill would not receive them in New York, those two checks.

Q. Is that the first you saw of them? A. Yes, sir.

Q. Hadn't you seen them at the time they were made out in your office in Uniontown? A. No, sir.

Q. I call your attention to the fact that the check marked Government's Exhibit 16-A is endorsed by Mr. R. B. Spackman, and I ask you whether that is the Spackman that you referred to in your direct testimony? A. You mean yesterday?

Q. Yes. A. That is R. B. Spackman.

Q. And I show you also Government's Exhibit 16-B in
2615 evidence, and I call your attention to the endorsement R. B. Spackman, and I ask whether that is the same person? A. It is the same person.

Q. You testified yesterday that Mr. Spackman, prior to the conference you and he and Cahill had at the Lafayette Hotel in Uniontown, had been negotiating a partnership with you; that is correct, isn't it? A. That is correct.

Q. And had Mr. Spackman become your partner at any time prior to May 1, 1938? A. No, never.

Q. At no time? A. At no time.

Q. Neither at the time I mention or at any other time? A. At no other time.

Q. You went out of business before the negotiations were consummated, is that correct?

2616 Mr. Cahill: I object to that as immaterial; not within the time.

The Court: I will allow it. What is the answer?

The Witness: The question was whether Spackman ever went into business with me, is that right?

The Court: No, that is not the question. The stenographer will repeat the question.

Q. (Read.) A. No, the negotiations fell through.

Q. When, about, did they fall through? A. Right after the boys came to New York to see me; him and I gave up talking about it.

Q. You mean came to Uniontown? A. Came to Uniontown; right after Cahill came to Uniontown.

Q. Now, I show you again this check which is dated April 30, 1938, Government's Exhibit 16-A in evidence, and I ask you if you can tell from the check when that was paid? A. You mean the bank stamp on it?

Q. Yes. Is there a bank stamp on it?

Mr. Cahill: If your Honor please, I submit the instrument is in evidence and speaks for itself.

2618

The Court: It speaks for itself.

Mr. Boudin: That is no reason why I can't cross-examine him on it.

Mr. Cahill: I object to counsel's statement, your Honor.

The Court: Yes.

A. You want me to answer on it?

Q. Yes.

The Court: I sustain the objection.

Mr. Boudin: I take an exception.

Q. Now, when you saw these checks in New York City, when was that, to the best of your recollection? A. To the best of my recollection that was around in the first part of May when I had come to New York. 2619

Q. Would you say it was after May 7th? A. Well, I can't place it definitely, only by those checks. It is May 7th on that one check, so it must have been after that.

Q. In other words, now, by refreshing your recollection from one of these checks you say it was after May 7th? A. It must have been.

Q. And can you say how long after May 7th it was? A. No, I can't remember exactly.

Q. At that time on May 7th, or the date when you met after May 7th, 1938, the check of April 30th had not been paid to him as yet, had it? A. No; both checks were together.

Q. And do you know how long after that either of these checks was paid?

Mr. Cahill: I object to that. The exhibits speak for themselves, your Honor.

The Court: No, I will allow that. The question is not when they were paid; the question is his knowledge.

2621

A. The only thing I can remember is Cahill would not cash the checks——

The Court: No, no, strike that out. The stenographer will repeat the question. Now, listen to the question.

Q. (Read.) A. No, I don't know.

Q. What is your answer? A. I don't know.

Q. I show you this paper writing, and ask you to look at it and see whether that will refresh your recollection as to when these checks or either of them was paid (handing letter to witness)? A. This letter is dated May 11th, so it must have been May 11th when they were paid.

2622

Q. Now, read it again.

Mr. Boudin: I move to strike out the answer.

The Court: Strike it out.

Q. I only ask you whether that refreshes your recollection. Does it? A. Yes.

Q. So now, after reading that letter, you know when these checks were paid; is that what you mean to say? A. I know when one of them was paid.

Q. I see.

Mr. Boudin: We offer this for identification, if your Honor please.

The Court: Mark it.

(Marked Defendants' Exhibit E for Identification.)

Q. You said that this refreshes your recollection as to when one of them was paid, but not as to the other; is that correct? A. No, sir. 2624

Q. What? A. Yes, sir, that is correct.

Q. Does not refresh your recollection as to the fact that the other was not paid on May 11th or by May 11th? A. It is what the letter says, that is all I know.

Mr. Cahill: I object to that and move to strike it out.

The Court: Motion denied.

Q. Now, do you or do you not know as to whether or not you had money in your bank on May 7th sufficient to pay both of these checks? A. No, I do not know.

Q. Doesn't this letter refresh your recollection on the subject? I am now referring to the letter which has now been marked Defendants' Exhibit E for Identification. A. The letter says there wasn't enough in the bank to cover both of them. 2625

Mr. Cahill: If your Honor please, I object to a second time on that point. It is getting the contents of the letter in without being offered.

Mr. Boudin: It is cross-examination.

The Court: I will strike out the answer. The stenographer will repeat the question.

Q. (Read.) A. I don't think I get that question.

The Court: Repeat it again, please.

Q. (Reread.)

The Court: Answer yes or no.

A. No.

Q. You mean the letter does not refresh your recollec-
2627 tion? A. No.

The Court: That has been answered.

Mr. Cahill: I submit that has been answered three times, asked and answered.

The Court: Yes.

Q. Will you now say that you did have money on May 7th or at any time thereafter up to May 15th in your bank to meet both of these checks? A. At that time I had nothing to do with our bank account.

Mr. Boudin: I move to strike out the answer as not responsive.

The Court: I will allow the answer to stand.

2628 Mr. Boudin: I will ask that my original question be answered.

The Witness: Well, I don't know; I can't say if we did or not. I haven't the slightest idea.

The Court: Let me hear that question.

(Question read.)

Q. And you say that this letter does not refresh your recollection on the subject?

Mr. Cahill: I object to this as repetitious.

The Court: Sustained.

Mr. Boudin: Exception.

Q. Now, do you recall the time when you went out of business? A. Yes, sir.

Q. Will you say at the time you went out of business you had paid Cahill or Maggio all that was due them or either of them for work done for you before you went out of business? A. They were paid up, yes, sir.

Q. At that time, by May 31st? A. Yes, sir, they were paid up.

Q. You are sure about that? A. Yes, sir. 2630

Q. Now, that you know even though you had no charge of that bank account; is that correct? A. That is right.

Q. You have no difficulty in knowing that?

Mr. Cahill: Now, if your Honor please, I object to these characterizations.

The Court: I sustain the objection.

Mr. Boudin: Exception.

Q. Now, why do you know whether you paid them on May 31st what was due them and don't know when these checks were paid? Give us your explanation, if you have any.

Mr. Cahill: I object to the characterizations and I object to the form of the question.

The Court: I will sustain the objection on the ground that the question is multiple. 2631

Mr. Boudin: Exception. Well, we will break it up.

Q. Do you know of any reason for the difference? Just answer yes or no.

Mr. Cahill: I object to that question as vague.

The Court: I sustain the objection.

Mr. Boudin: As leading on cross-examination?

Mr. Cahill: Now, if your Honor please, I ask that I be relieved of the obligation of having to answer these comments.

The Court: I ask now again that Mr. Boudin refrain from commenting upon the objections of his opponent.

Mr. Boudin: I am sorry, if your Honor please. It struck me as very funny, and I am sorry I permitted myself to express it.

Mr. Cahill: I object to Mr. Boudin's remarks as to things striking him funny. I do not see it that way.

2633

The Court: I again admonish counsel for the defense that his remarks are improper.

Mr. Boudin: I respectfully except to your Honor's last remark.

The Court: I appreciate the fact that you include the word "respectfully." Proceed.

Q. Now, when you came down to New York on the occasion when you saw these two checks, where did you first meet Mr. Cahill? A. Down near the Beach Transportation.

Q. Inside or outside their place of business? A. Outside.

Q. Front? A. Outside in the front or the side; I can't

2634 remember; it was in the street.

Q. And the Beach Transportation Company's place of business is where? A. It is on Washington Street somewhere, if I remember right. I have never been there since.

Q. Is it near Desbrosses Street? A. What is it?

Q. Is it near Desbrosses Street? A. I think it is, yes.

Q. You are familiar with that neighborhood, aren't you? A. I go through it occasionally. I know where it is.

Q. Well, you had your office there for six or eight months anyway? A. On West Street.

By the Court.

Q. Near where? A. The office was on West Street, around No. 350.

Q. Near what street? A. I can't remember. It seems to me it was Cortlandt Street; near Cortlandt Street.

By Mr. Boudin.

Q. Same general neighborhood, isn't it? A. General neighborhood.

Q. Do you recall distinctly the occurrences that morning? I believe it was in the morning, you testified, and 2636
if you have not, will you please state whether or not it was in the morning? A. I can't remember exactly what part of the day it was.

Q. Now, let us see whether you can refresh your recollection by any other occurrences. When had you left Uniontown before this visit on your way to New York? A. Well, I can't remember, though I always liked to drive at night. I tried to leave in the evening always, but I can't remember whether I did that time or not.

Q. Do you remember what day of the week it was? A. No, I can't remember.

Q. Would it help you if I told you that May 7th was on a Saturday? I think it was. I would like to check up on the calendar.

2637

The Court: Well, you had better be sure about it before you ask the witness to depend upon it.

Mr. Boudin: That is why I said I want to check up on it.

Mr. Cahill: It is a quarter to twelve, your Honor.

The Court: Well, we will take a recess and in the meantime you can find out what day May 7th came on in 1938.

(Short recess.)

The Court: What day was May 7th?
Mr. Boudin: Saturday, if your Honor please.
The Court: Proceed.

By Mr. Boudin.

Q. Would the fact that May 7, 1938, fell on a Saturday help you to place the date of your meeting Cahill at the Beach Transportation Company? A. No, I can't say that it helps me. I can't remember just exactly what day it was.

Q. Now, when you got there, did you go into the office of the Beach Transportation Company? A. No, I don't
2639 believe so. I think I sent some boy in on the street to ask him to come out. I seldom went in the office there.

Q. No. On that particular occasion did you go into the office of the Beach Transportation? A. I can't remember.

Q. Well, did you meet Mr. Sheck the head of the Beach Transportation Company, that morning? A. No, I never met him that I know of.

Q. Did you go into a restaurant across the way known as the Paris Cafe or Paris Restaurant? A. Well, I have been in a restaurant different times there, but I can't remember the name of it.

Q. I am speaking of that particular occasion. A. No, I can't remember that I went in there that morning or not.

2640 Q. How long did you spend with Cahill that morning? A. I can't remember.

Q. Well, would you say it was an hour, an hour and a half or two hours? A. I don't think it was hardly an hour.

Q. Well, how long do you think it was? A. Maybe a half-hour, three-quarters of an hour; I don't remember.

Q. Where did you spend all of that time? A. I imagine it was in my car because I had my car with me then.

The Court: Do you mean an automobile or a truck?

The Witness: An automobile.

Q. Was your automobile in front of the Beach Transportation Company's place of business? A. It was on that street, within a few doors of it.

Q. You mean to say that you may have gotten into the car with Cahill and carried on your discussion there? A. I am sure that is where we talked, in my car.

Q. Inside your car? Both of you got into your car? A. Yes, sir.

Q. Anybody else get into it? A. It seems to me that there was someone else there, but I can't remember who 2642
it was.

Q. Was Maggio there? A. It was probably Maggio because he was usually around.

Q. Now, let me refresh your recollection: Isn't it a fact that you and Cahill and some others went into that Paris place, Paris Restaurant on that occasion and had your conversation there? A. Oh, I can't remember.

Q. Or at least part of it? A. I can't remember that we did. Possibly we might have, but I can't remember it now.

Q. Try to refresh your recollection. Bring yourself back to that morning. I would like to see whether it is not a fact, Mr. Beatty, that you and Cahill and Maggio and Mr. Sheck of the Beach Transportation went into that 2643
Paris Restaurant, and sat down there and conversed there. A. We may have, but I can't remember anything at all about this Mr. Sheck. I may have met him, but I can't even remember.

Q. Do you remember what he looked like? A. No, I haven't the slightest idea.

Q. Sure about that? A. I may have met him, because I have a very poor memory for names. I can't remember names.

Q. How about faces? A. Who?

Q. How about faces? You have a poor memory for names. I will identify him as the man who was the head of the Beach Transportation Company.

The Court: That doesn't indicate the face.
The Witness: That doesn't help me any.
The Court: Is Mr. Sheek here?
Mr. Boudin: No.

A. I can't remember anything about him. I might have met him and talked to him, but I can't remember.

Q. Well, it could have been inside the office of the
2645 Beach Transportation Company? A. I don't believe I was ever in the office. I think I was in the door once, but I can't even be sure of that.

Q. Now, coming down to this sticker that you testified to yesterday: When did you first see the sticker on the check? A. I put it on the check.

Q. And when? A. It was when I was in New York. I can't remember where I got the sticker or where I put it on.

Q. Where was it that you put this sticker on? A. It seems to me that I went in a bank somewhere and the man gave me the sticker.

Q. In that neighborhood? A. I can't recall where it was. I have been trying, but I can't recall where it was.

2646 Q. Well, you didn't bring the sticker with you from Uniontown, did you? A. No. I went in a bank and a man, one of the tellers at the window, gave me the sticker.

Q. How far was that bank from the Beach Transportation Company? A. Oh, I can't remember where I got it. I know I went in a bank somewhere and got it.

Q. How long a distance from the Beach Transportation Company's office would you say the bank was? A. I couldn't tell you. It seems to me that when I was up

here on that trip that I went out to Long Island, but I can't tell for sure whether I did or not.

Q. You think you may have got this sticker in a bank on Long Island? A. I may have stopped somewhere along the road in a bank and got the sticker. I can't remember.

Q. Let us see whether I can refresh your recollection on the subject. You said you spent about a half hour or three-quarters of an hour with Cahill on that occasion at the Beach Transportation Company's office or in front of it? A. Yes, I remember talking to Cahill there.

Q. All right. Wait a minute. You saw him again that day after you went to Long Island? A. Yes, I saw him again.

2648

Q. And what time of the day was that? A. Oh, I can't remember. I presume it was in the afternoon. It was after I had seen him the first time, but I can't remember exactly how long.

Q. Would you now place the first meeting as in the forenoon of that day? A. It was probably in the forenoon; maybe around dinner time if we went in a restaurant, it must have been close to dinner time.

Q. You remember now going into the restaurant? A. No, I can't remember. You tell me that we did, but I can't remember it even yet.

Q. Now, how long did the trip to Long Island City—did you say Long Island City or Long Island? A. It would be Long Island City, yes.

Q. How long did that trip take you? A. It would take 2649
at least two hours.

Q. And where did you see Cahill again that day? A. It seems to me it was down near our office somewhere that I saw him later on.

Q. Never mind what it seems to you. What do you recollect about that? A. It was down near the union hall on Varick Street I met him.

Q. Was he alone at the time or was there somebody in his company? A. He was alone.

Q. And that was the time when you put the sticker on? Is that what you mean to say? A. Well, we were still on the subject of the checks.

Mr. Boudin: Now, I object to that and move that it be stricken out.

The Court: Strike it out.

Q. I am asking you now is that when you put the sticker on? A. It was that day, but I can't remember where at I put it on at.

Q. You now say you don't remember whether it was in the meeting in the forenoon or the meeting in the after-
2651 noon? A. No, I can't remember where I put the sticker on or what part of the day I put the sticker on.

Q. Do you say positively that you had two meetings with Cahill on that day? A. No, I am sure that I talked to him twice that day.

Q. I haven't asked you whether you talked to him twice that day. Did you see him twice? A. Yes, I seen him twice.

Q. And where was the rubbing out done, whereby you rubbed out things that appeared on the checks that Cahill objected to? A. I can't remember where I did it.

Q. Now, wasn't that in the office of the Beach Transportation Company? A. No, sir. I can't remember that it was. It may——

2652 Q. Now, wait a minute.

Mr. Cahill: May he finish, your Honor?

Q. You say that is not so or you don't remember? A. I don't remember where I did it.

Q. It may have been in the office of the Beach Transportation Company? A. It is a possibility.

Q. You don't think anybody in the bank rubbed it out for you? A. I rubbed it out myself.

Q. Where did you get the rubber to rub it out with? Did you get that from a bank teller? A. I can't remember where I got it. Possibly I had it with me. I always carry pencils with rubbers with me.

Q. Did you lean on a table when you were rubbing it out or did you sit at a table? A. I can't even remember. I know I rubbed it out, but I can't remember where I did it.

Q. You mean you have no visual recollection at all of the occurrence? A. No, sir, but I know I did it.

Q. How do you know you did it? A. I know I did it.

Q. Well, do you remember the occasion of doing it? I mean can you now take yourself back in your memory and see yourself doing that? A. That has been too long ago. I know I put the sticker on. 2654

Q. One moment. The answer to that is yes or no. A. What is the question?

The Court: Now, just a minute. The answer to that is not yes or no.

Mr. Boudin: As to whether he remembers seeing himself doing that?

The Court: He may answer that in any way he feels his conscience dictates, because if he doesn't remember, he can say neither yes nor no.

Mr. Boudin: I respectfully except and I might call your Honor's attention to the fact that it is his memory that I am inquiring about and not the fact.

The Court: I say again, Mr. Boudin, that there 2655
are questions addressed to one's memory that may not necessarily be answered yes or no.

Mr. Boudin: That is true, of course.

The Court: That was my ruling. Now, proceed.

Mr. Boudin: I respectfully submit that this can be answered by yes or no.

The Court: Well, I have already ruled and you have taken your exception. So don't let's waste any more time about that. Proceed.

Q. Will you now say that you didn't rub it out in the presence of Mr. Sheck in the office of the Beach Transportation Company or in the Paris Restaurant? A. I can't remember where I rubbed it out.

Q. Will you now say that you put the sticker on in Cahill's presence, on that check? A. I can't remember where I got the sticker. I went in a bank.

The Court: No. That is not the question.

The Witness: And got the stickers and put them on.

The Court: The question is whether you remember putting the stickers in the presence of Cahill.

2657

The Witness: No, I can't remember if he was there when I put them on.

Q. By the way, this inscription, rubbing out and the stickers: Does that refer to both of these checks or one of them? A. They were both together.

Q. Was the inscription on each of them? A. There was an inscription on each one of them.

The Court: And a sticker on each check?

The Witness: And I put a sticker on each check and I rubbed the inscription out on each check.

Q. Isn't it a fact that the stickers had been put on those checks before you ever met Cahill that morning?

2658

A. No.

Q. Sure about that? A. I am sure about it.

Q. And is it not a fact that you brought these checks with you that morning? Try to remember carefully.

Mr. Cahill: I object to the admonition to the witness, your Honor.

The Court: Overruled.

A. I can't remember seeing the checks until we were in New York and it seems to me Mr. Cahill handed them to me and he said he couldn't accept them in that condition.

Q. Do you now swear that you didn't bring them with you that morning?

Mr. Cahill: Just a moment. The witness is under oath throughout, and I object to that statement.

The Court: I will allow it.

A. I am mixed up a little. What is that?

Q. (Read.) A. I can't remember bringing them. The first I remember seeing these checks was when Mr. Cahill gave them to me because he wouldn't cash them. 2660

Q. So your answer now is that you have no memory of bringing them with you, but you may have brought them with you that morning?

Mr. Cahill: I object to the question.

The Court: Objection sustained.

Q. What is your testimony now? Is it that you have no memory of it or that you remember seeing them for the first time in Cahill's hand? A. Yes, that is the first time I remember seeing the checks, in Cahill's hand.

Q. How about preceding that? Have you any memory of it or have you no memory of that?

2661

Mr. Cahill: I will object to that.

The Court: I will exclude the question.

Mr. Boudin: Exception.

Q. I ask you again will you swear that you did not bring these checks with you that morning?

Mr. Cahill: I object to it as repetitious.

The Court: Sustained.

Mr. Boudin: Exception.

The Court: I don't sustain it on the ground particularly that it is repetitious, but I sustain it on the ground that the Court, in the exercise of its discretion, may determine when cross-examination has gone as far as it should go on a particular subject matter.

Q. Now, going to another subject, Mr. Witness: You testified yesterday that on that occasion you saw, or on that day of that particular visit to New York you saw Mr. Campbell, is that correct? A. On that visit I seen Mr. Campbell in Brooklyn.

2663 Q. Now, what time of the day was it that you saw him there? A. We were to meet him——

The Court: No. What time did you see him if you can state.

The Witness: Around 1 o'clock I think it was.

Q. And was that in between your interviews with Cahill? A. No.

Q. Or with Cahill at the time? A. He was there, but that was after we had been talking.

Q. You mean Cahill was there? A. I had to wait over another day to see him.

Q. Oh, it wasn't the same day? A. No, it wasn't the same day.

2664 Q. You stayed over that day in New York, is that correct? A. That night.

Q. That night. And you saw Campbell the following day? A. Yes, sir.

Q. At that meeting between you and Campbell, Cahill was present? A. Yes, sir.

Q. Who else was present, if anybody? A. Jacob Smell was there.

Q. That is your driver? A. My driver, Jacob Smell.

Q. Was Maggio there? A. There was someone else there. I can't remember right now who it was, but there was someone else with Cahill.

Q. And where was that meeting? A. On Atlantic Avenue in Brooklyn.

Q. Atlantic Avenue near where or the corner of where? A. It was near 3rd or 4th Street on Atlantic Avenue in Brooklyn.

Q. Did you meet there by appointment? A. By appointment, yes. Cahill made the appointment.

Q. And did Cahill tell you where the place of the appointment was? A. Cahill told me and he waited with me. 2665

Q. Now, had you met Cahill before on that morning, if it was in the morning? A. That is where I met him, where we had the appointment.

Q. When did you make the appointment or when did Cahill tell you that he had made the appointment? A. The last time we made the appointment after I had been talking to him, we made the appointment for the following day.

Q. Now, was that at your second meeting with Cahill? A. Yes, the second meeting.

Q. On the first day of your visit to New York? A. Well, I believe it was. That is correct.

Q. And at that time he told you that he had made an appointment with you to meet some officer of his union the following morning, is that correct? A. That is right. 2667

Q. Did he mention the time the following morning that the appointment was made for? A. I can't remember exactly, but it seems to me it was around 10 o'clock.

Q. And where did you meet Cahill that morning? A. Where we had the appointment, on Atlantic Avenue.

Q. Did you find him there when you got there? A. Well, I believe they were there when we got there.

Q. When you say "they" you mean Cahill? A. Yes, there was Cahill.

Q. And somebody else? A. And there was someone with him.

Q. Not Campbell? A. No, not Campbell.

Q. And you joined Cahill and his companion? A. Yes.

Q. And waited for Campbell to arrive? A. Yes, sir, that is right.

Q. And Campbell did arrive? A. Eventually he arrived, yes, sir.

Q. Then you had a conversation that you told us about yesterday? A. Yes, sir.

Q. Now, how long did that conversation between you and Campbell last? A. Well, I can't remember exactly, but it seems to me it was a long time. Possibly as much 2669 as an hour and a half or two hours.

Q. Were you standing at that same place? A. We were standing on the street most of the time.

Q. Where were you the other part of the time? A. My car was there. I think we got tired of standing up and sat down on the side of my car.

Q. You mean on the running board? A. On the running board, yes.

Q. All four of you? A. There was a curb along the street, a building or something, and it seems to me there was an iron grill. Some of the boys sat on that part of the time.

Q. Can you visualize the scene of the four of you standing or sitting there near your car at that place? A. I can 2670 remember the meeting and I remember a lot of the talk we had. I can't remember everything exactly.

Q. Well, do you remember the scene, I mean, the way you were sitting or standing while having that conversation? A. No, I can't remember exactly.

Q. But you do remember it was Campbell? A. Yes.

Q. No question about that? A. No, there is no question in my mind about that.

Q. Had you ever seen Campbell before? A. I had never seen him before. I never seen him again until I seen him in the court room here yesterday.

Q. And yet you recognized him? A. I recognized him.

Q. Now you say that was the day following your conversation about these two checks? A. Yes, sir.

Q. And the stickers and the rubbing out? A. Yes.

Q. No mistake about that? A. I can't remember. There may be, but I don't think there is.

Q. What kind of mistake may it be? May it be some other time?

Mr. Cahill: I object. 2672

The Court: Objection sustained.

Mr. Boudin: Exception.

Q. May it have been an entirely different trip to New York?

Mr. Cahill: I object to it as speculative.

The Court: I will allow that.

A. No. I think it was when I was in New York about this to straighten out about these checks and telegrams.

Q. What was there to straighten out about these checks? A. Well, they had for protection against racketeering——

Mr. Boudin: I move to strike it out.

The Court: Motion denied. 2673

Mr. Boudin: I take an exception.

The Court: Now let the witness finish his answer if he hasn't already done so.

Mr. Boudin: I respectfully except to your Honor's directing the witness to proceed with the answer.

The Court: You may note your exception.

(Question read.)

The Witness: Well, as I said, the checks had "For protection against racketeering" on them. As I said yesterday, Mr. Shipley had sent some telegrams. That stirred up some trouble with the union. Our shipments were stopped right away.

Mr. Boudin: I move to strike out all of that.

The Court: Denied.

Mr. Boudin: Exception.

The Court: Proceed.

Mr. Boudin: It has clearly nothing to do with the straightening out of the checks.

The Court: I don't know that that was your
2675 question.

(Question reread.)

The Court: All right.

Mr. Boudin: Now, if your Honor please, I again move to strike out everything after the words about racketeering which referred to the checks.

The Court: Motion denied.

Mr. Boudin: Exception.

The Court: Now have you finished your answer?

The Witness: Yes.

The Court: Now, proceed in order.

By Mr. Boudin.

Q. When you left Uniontown you didn't know that there
2676 was any objection to the checks, did you? A. I left Uniontown because we couldn't——

The Court: No. Strike out the answer. Repeat the question.

Q. (Read.) A. No.

Q. So you didn't come to New York in order to straighten out anything about the checks, did you? A. No.

Q. Well, there had been some trouble about these men not being paid, hadn't there? A. There had been, yes.

Q. There was, wasn't there? A. Yes.

Q. When you got to New York there was considerable talk about that between you and Cahill, wasn't there? Just answer yes or no. A. Yes.

The Court: Now, just a moment. I again admonish counsel that he is not to give any direction to the witness as to how he shall answer the question. If the witness makes an answer which is not a proper answer counsel may address himself to the Court by a proper motion. Proceed. 2678

Q. How many times have you seen Campbell in all? A. Only twice.

Q. What? A. Only twice.

Q. Now, when were those two times? A. Yesterday and over in Brooklyn.

Q. Between that occasion in Brooklyn and yesterday in this court you had never seen Campbell? A. No, sir.

Q. Had you met any other officer of the union between your meeting Cahill in front of the Beach Transportation Company with reference to these checks that you testified to yesterday?

Mr. Cahill: I object as to the time, and I wish to call that specifically to the attention of the Court, that it goes beyond the time of the indictment, and I should feel entitled on redirect to go into it. 2679

The Court: I am not going to worry about that.

Mr. Boudin: I will change my question.

The Court: If counsel opens the door by a question on cross-examination, you would have a right on redirect examination to go through the door, and you don't have to give any notice beforehand or apologize for it.

Mr. Boudin: All right. I will reframe my question in view of your Honor's ruling.

The Court: I didn't make a ruling. I made an observation.

Mr. Boudin: I will reframe the question by saying on May 31, 1938, instead of yesterday.

The Court: Do you understand the question?

The Witness: I don't understand the question now.

Q. Well, had you met any other officer of the union between May 7, 1938, and May 31, 1938? A. Not to know him as such.

2681 Q. What? A. I wouldn't——

The Court: "Not to know him as such."

The Witness: I wouldn't know him as an officer of the union.

Q. You mean that you might have passed one on the street without knowing him, but you had no conversation?

The Court: I will exclude that. Any one of us may be doing that every day.

Mr. Boudin: That is what I say.

The Court: I will exclude that of my own motion.

2682 Mr. Boudin: With your Honor's permission I will reframe the question, first, to make sure——

The Court: Don't reframe it. Just put another one.

Q. What you mean is to your knowledge you have not met any, is that correct? A. That is correct.

Q. So that between your arrival in New York on the morning when you met Cahill in front of the Beach Transportation Company's place of business and May 31, 1938,

you met, to your knowledge, only one union official and that was Campbell, is that correct? A. That is correct.

Q. Now, you testified yesterday that in that conversation with Campbell you had referred to Cahill and to your difficulties with him, that is correct, isn't it? A. That is correct.

Q. And in that same conversation Campbell said that the arrangement you had made with Cahill with respect to $40 a week would not be permitted to go on, that is correct? A. Yes, sir.

Q. Isn't it? A. Yes, sir.

Q. And he also said you would have to thereafter observe the union scale of wages, that is correct? A. Yes, 2684
sir.

Q. Did you then, after that conversation, pay the union rate of wages? A. We never had any more business after that in New York.

The Court: No. Strike out the answer. The question is whether you paid union wages after that time.

The Witness: If we had paid any. I can't remember paying any after that date at all. If we had paid any we would have paid the union scale.

Q. Now, when you remember saying you don't remember paying any, you mean to say that Cahill ceased working for you on that occasion? A. We never had any more busi- 2685
ness that he could handle after that occasion.

Q. By that you mean that you ceased sending trucks to New York after that? A. Yes, sir. We couldn't get any more business into New York.

Q. I show you this paper, and ask you whether you recall that as a telegram sent by your company to Mr. Cahill?

Mr. Cahill: I object to that.

The Court: I sustain the objection. You can't characterize it. You can show him the paper for the purpose of refreshing his recollection and let him look at it, and then after he looks at it, he may state whether his recollection is refreshed, but the contents of the paper can't be disclosed except by offering it in evidence.

Q. Now I will show you this paper, and ask you whether you recognize it? A. I recognize it.

Q. That comes from your company, does it not?

2687

Mr. Cahill: I object to that.

Mr. Boudin: It is for the purpose of laying a foundation for offering it in evidence.

The Court: I will allow it.

A. Yes, my signature is on it.

The Court: The answer is yes.

The Witness: Yes.

Mr. Boudin: I offer that in evidence.

The Court: Show it to the District Attorney.

Mr. Cahill: No objection.

The Court: Received in evidence.

(Marked Defendants' Exhibit F.)

2688

The Court: Read it to the jury.

Mr. Boudin: This Defendants' Exhibit F is a telegram addressed to International Brotherhood of Teamsters, Chauffeurs, Stablemen & Helpers, Local 807, attention Thomas Hickey, 74 Varick Street, N. Y. C. "We have reinstated Michael Cahill. Disregard first telegram. Differences adjusted, B. & B. Transportation." Dated May 13, 1938, at Uniontown, Pennsylvania.

Q. Now, after you sent this telegram, didn't Cahill continue in your employ? A. He was in our employ if we had any business in New York.

Q. You mean you now say that you had no business in New York after that? A. We didn't have any after that.

Q. And did you have business in New York between the date of your visit to New York and May 13th? A. No, I don't think we had had any business at all in all of May in New York.

Q. Now, will the date of this telegram, or does the date of this telegram, refresh your recollection as to the date of your visit to New York and the conversation with Cahill at or in front of the Beach Transportation Company's place of business? 2690 A. My visit was after that telegram.

Q. What? A. My visits, as near as I can remember, was after that telegram.

Q. You say now that your visit to New York was after this telegram of May 13, 1938?

Mr. Cahill: I object to the form of the question: "You say now." The constant repetition of that word "now," as though there were some variance.

The Court: Yes.

Mr. Boudin: I take it that the jury may judge of the variance.

Q. Do you say that your visit was after May 13th, 1938? 2691 A. Yes, I am sure I was in New York after that telegram was sent.

Q. And was it on this visit to New York after you sent this telegram that you had your conversation with Cahill about those checks? A. It was in my memory that——

Q. No, answer yes or no.

Mr. Cahill: I object to the tone of counsel to the witness.

The Court: Now, just a moment:

Mr. Boudin: If your Honor please, I am entitled to an answer.

The Court: Just a moment, please. Stop.

Mr. Boudin: All right.

The Court: Strike out, "Answer yes or no." Repeat the question to the witness.

(Question read.)

The Court: Do you understand the question?

The Witness: I understand it.

The Court: All right, you answer it to the best of your ability.

2693

A. No.

Q. You mean the conversation with Cahill with respect to the checks was before the telegram was sent? A. Yes.

Q. Didn't you say a moment ago that the conversation took place after you sent the telegram?

The Court: I will exclude that question.

Mr. Boudin: Exception.

Q. Did you testify a moment ago that the visit with respect to the checks, visit and conversation with respect to the checks, was after this telegram was sent?

Mr. Cahill: Objected to.

2694 The Court: Overruled.

A. We had—let us hear the question and I will try to answer.

Q. No.

Mr. Boudin: I move to strike out any answer that has been given.

The Witness: I am mixed up now.

The Court: Strike out the answer. Read the question.

Q. (Read.) A. I can't remember what I said a moment ago.

Mr. Boudin: Well, I guess that is all with this witness.

The Court: Any further cross-examination by counsel for other defendants?

Mr. Murray: Just a question, if your Honor please.

The Court: Mr. Murray.

2696

Cross-examination by Mr. Murray.

Q. When you testified yesterday that Mr. Cahill went to your home in Uniontown, he was accompanied by a man named Murray—are you certain that was his name? A. That is what the name was that he gave. I don't think that is his name now, but that was the name he gave there.

Q. Do you recollect whether or not his name was McCaffrey? A. I heard his name was McCaffrey now, but he then gave his name as Murray at that time.

Mr. Murray: Thank you.

Mr. Marks: May I have this marked for identification?

The Court: Yes.

2697

(Marked Government's Exhibit 18 for Identification.)

Redirect examination by Mr. Marks.

Q. Mr. Beatty, I show you Government's Exhibit 18 for Identification and I ask you if you recognize that. A. Yes, sir.

Q. Did you discuss a telegram in your conversation with Campbell and Cahill in Brooklyn? A. Yes, sir.

Q. Is that the telegram that you discussed? A. These are part of the telegrams. There were several telegrams, and this is one of them.

Mr. Marks: I offer it in evidence.

Mr. Boudin: Objected to as irrelevant, immaterial and incompetent. The issues are——

The Court: Do counsel for the defendants, any of them, wish to look at it?

Mr. Murray: I was just looking at it, your Honor.

2699

The Court: Let me look at it.

(Handed to Court.)

Mr. Marks: May I call your Honor's attention to Defendants' Exhibit F? I don't know whether you have seen that.

The Court: Yes, I have seen that.

Mr. Murray: May I have the date, the date of that telegram?

Mr. Marks: May 6, 1938.

The Court: Is there an objection?

Mr. Boudin: Objection on the ground that it is immaterial, irrelevant, incompetent, self-serving declaration, and not proper redirect.

The Court: I will sustain the objection until it

2700

is shown that the paper offered is the paper referred to in the exhibit now in evidence.

Q. Mr. Beatty, will you look at Defendants' Exhibit F in evidence, and will you tell us whether the first telegram referred to in Defendants' Exhibit F is the same telegram which is now Government's Exhibit 18 for Identification? A. That is a copy of the first telegram, and it is one that—

Mr. Boudin: I object to this as leading, if your Honor please, and move to strike out the answer.

The Court: Overruled.

Mr. Boudin: Exception.

Mr. Marks: May we have the answer completed, your Honor? I don't think it was.

The Court: Well, let us see how much of the answer there is.

(Answer read.)

A. (Continued) It is the one that the last telegram referred to.

2702

The Court: And was that telegram discussed in the meeting which you had with Cahill?

The Witness: Yes.

The Court: Objection overruled. I will receive it as against the defendant Cahill.

Mr. Boudin: Exception.

(Government's Exhibit 18 for Identification received in evidence.)

Mr. Marks: May I read it to the jury, your Honor?

The Court: Yes.

Mr. Marks: This, ladies and gentlemen, is a copy of a Postal Telegraph dated May 6, 1938, addressed as follows (reading Government's Exhibit 18 to the jury). 2703

Mr. Marks: That is all.

The Court: Any further questions of this witness?

Mr. Murray: Yes.

Recross-examination by Mr. Murray.

Q. Now, Mr. Beatty, I show you this paper and ask you whether you recognize that. A. That is the original telegram. This other is a copy.

Q. You recognize this? A. Yes.

The Court: Mark it for identification.

Mr. Murray: Yes, your Honor.

(Marked Defendants' Exhibit G for Identification.)

2705 Q. Now, was this paper sent at the instance of your concern, Mr. Beatty? A. Yes, sir. Mr. Shipley. I don't know if his name is on it.

Mr. Murray: All right, I offer it.

The Court: Is that the one just marked for identification?

Mr. Murray: Yes, your Honor.

The Court: Exhibit G for Identification?

Mr. Murray: Yes.

Mr. Boudin: May I see it?

(Handed to Mr. Cahill and Mr. Boudin.)

Mr. Boudin: Is this offered?

Mr. Murray: Yes, I have offered this in evidence subject to your inspection of it.

2706 The Court: And objection if he has any.

Mr. Boudin: No objection.

The Court: All right, mark it.

(Defendants' Exhibit G for Identification received in evidence.)

The Court: Does it differ in any way from the copy?

Mr. Murray: There is a slight difference, your Honor.

The Court: Well, call it to the attention of the jury.

Mr. Murray: Well, there is a reply to this, and that is why I offered this. (Addressing the jury) This is a telegram from Uniontown, Pennsylvania, May 6, 1938 (reading Defendants' Exhibit G to the jury).

Q. Now, Mr. Beatty, will you look at this paper and tell me whether or not you recognize it? A. It is a telegram, but I never seen it before. I don't recognize it.

Q. Do you know that it was sent by your concern? A. 2708
No, sir. It is signed by our concern, but that is the first I ever seen it.

The Court: Mark it for identification.

(Marked Defendants' Exhibit H for Identification.)

Mr. Murray: I offer it, if your Honor please.

Mr. Cahill: We object to it at this time. No proper foundation laid.

The Court: Let me see it.

(Handed to Court.)

The Court: Objection sustained.

Mr. Boudin: I respectfully except to the exclu- 2709
sion.

Q. Let me ask you this, Mr. Beatty: you testified yesterday about one of your trucks being wrecked; is that right? A. Yes, sir.

Q. And you stated to Cahill that you believed it was wrecked because you had testified before the Grand Jury; is that correct? A. Because I and the driver had testified.

Q. Yes. Then, subsequently, did you make an investigation concerning the damage to your truck?

Mr. Cahill: Objected to as improper recross.

The Court: I will allow it. Mr. Murray only asked one question on cross-examination.

A. You mean did we investigate in New York or——

The Court: Anywhere. Anywhere at all.

The Witness: Well, the only thing we could do was to——

2711 The Court: No, did you?

The Witness: No.

Q. Did you get a full report subsequently from Cahill about the damage to your truck? A. I can't remember that we did; no, sir.

Q. Well, did you subsequent to the telegram that you sent that we have just offered in evidence, Exhibit G——

The Court: You mean the one received in evidence?

Mr. Murray: Yes, your Honor.

The Court: Exhibit G.

Q. (Continuing) Did you then instruct Mr. Shipley
2712 from Uniontown to wire Mr. Cahill that he was reinstated?

Mr. Cahill: I press the objection that this is improper cross.

The Court: I will allow it.

The Witness: You mean I should answer?

The Court: Yes, you may answer.

A. No, I never instructed Shipley.

Q. Well, do you know whether or not after the incident of the damage to your truck that Cahill was reinstated in your employment? A. He never left the employment.

Q. Well, had you advised him at any time that because of the damage to your truck that you were dispensing with his services? A. Mr. Shipley sent the telegrams that we were dispensing with his services.

Q. With your knowledge? A. I knew after it was did. He did not do it with my instructions, but I knew that it was did later.

Q. And, of course, Mr. Shipley at that time represented your concern, the B. & B. Trucking Company? A. He was the treasurer. 2714

Q. Now, did you later, after the damage to your truck, cancel your direction to Cahill to quit your services? A. No. Shipley sent all those telegrams, and one of these telegrams says that he reinstates him. One of them says he fires Cahill; one of them says he reinstates him.

Q. Well, did you know about that, that there had been a reinstatement? A. I knew after the telegrams were sent that the telegram was sent.

Q. And that was sent with your approval, wasn't it? A. No, they were never sent with my approval.

Q. Beg pardon? A. They were never sent with my approval.

Q. Did you disapprove of them? A. I disapproved, and I even tried to recall it.

Q. Did you disagree with Shipley about it? A. We disagreed plenty on that question. 2715

Q. At any rate, after this incident connected with the damage to your truck, did Cahill continue in the employ of the B. & B. Trucking Corporation? A. If we would have had any business in New York he would have been the man that handled it.

2716

Mr. Murray: That is all.

The Court: Anything further from this witness?

Mr. Marks: Yes.

Redirect examination by Mr. Marks.

Q. Mr. Beatty, what did Cahill say to you in your last conversation with him as to your power to fire him?

The Court: Well, I think we went into that on direct examination.

Mr. Marks: Yes, I think we did, but in view of
2717 the recross by Mr. Murray, I should like to ask that one question.

The Court: No, I exclude it.

Mr. Marks: Beg pardon?

The Court: I exclude it.

Mr. Murray: No further questions from the defendants.

The Court: That is all from this witness. Next witness.

(Witness excused.)

ROBERT B. SPACKMAN, residing at 87 Pennsylvania Avenue, Fayette County, Uniontown, Pennsylvania, called as
2718 a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Spackman, what business are you in? A. In the motor freight transportation.

Q. In the latter part of 1937 were you in the same business? A. I was.

Q. And under what name did you operate then? A. As the Eastern States Transportation Company. That is individually owned by B. M. Spackman, doing business as Eastern States Transportation Company.

Q. And who is B. M. Spackman? A. B. M. Spackman is my wife.

Q. You were the general manager of the company? A. I was the general manager of the company with power of attorney under her authority.

Q. In 1937 up to May 31, 1938, how many trucks did the company operate? A. We operated between twenty and twenty-five trucks at that time.

Q. And between what points did you haul? A. Western 2720
Pennsylvania to points in New York, to points in New Jersey and to points into Delaware and to points into Maryland and to points into West Virginia.

Q. Was there any particular type of commodity in which you specialized? A. We handled commodities generally, or general commodities by virtue of our application filed with the Interstate Commerce Commission.

Q. You mean you had the right to handle general commodities? A. We had that right; yes, sir.

Q. Was there any specific commodity in which, as a matter of fact, your company specialized? A. We did not specialize in any particular commodity, Mr. Marks, but we did haul predominately enamel ware, plumbers' goods, radiators and glass.

Q. And did you haul enamel ware for any particular 2721
company? A. We hauled enamel ware at that time for the Richmond Radiator Company, a shipper located at Uniontown, Pennsylvania, and consigned to the Richmond Radiator Company or to the Continuous Sales Corporation at Long Island and to their customers located in Long Island City, New York, and the general metropolitan New York district.

Q. Now, of the twenty or twenty-five trucks which your company operated, how many did it own in that period? A. At that time we owned no trucks. The trucks were under an absolute lease, though, to our company.

Q. Do you know whether the drivers of the trucks that you leased owned their trucks themselves? A. In most cases the drivers owned those trucks.

Q. Now, in the early part of 1938, specifically in January, 1938, did you receive any telephone calls from anyone in New York City? A. I did.

Q. In January, 1938, did you receive a visit from anyone in Uniontown, Pennsylvania? A. I did.

2723 Q. From whom? A. From Mike Cahill and from Joseph McCaffrey.

Q. In January, 1938, Mr. Spackman? A. I want to correct that. From Murray DeMato.

Q. Now, where did you see DeMato? A. DeMato called me at my home telephone about 6 o'clock in the evening and asked if he could see——

The Court: No, don't tell us what he said.

A. (Continued) I saw DeMato at the White Swan Hotel in Uniontown.

The Court: After that telephone conversation?

The Witness: That was the arrangement.

2724 The Court: No, after that telephone conversation?

The Witness: Yes, sir.

Q. Did you have a conversation with him at the White Swan Hotel? A. I did.

Q. Did he show you anything? A. He did.

Q. What did he show you? A. He showed me his 807 membership and also a contract that he asked me to sign.

Q. Now, did you look at his 807 book? A. I asked him for it and I looked at it.

Q. And what did you see on it? A. I saw that name, Murray DeMato.

Q. Now, about how long did your conversation last?

The Court: We will suspend here until ten minutes past two.

(Recess to 2.10 P. M.)

AFTERNOON SESSION.

2726

ROBERT B. SPACKMAN resumed the stand.

Direct examination by Mr. Marks.

(Last question read.)

Q. Do you remember, Mr. Spackman, the conversation we had started to talk about? A. Yes, the conversation with Mr. DeMato.

Q. Yes. At the White Swan Hotel. A. That conversation lasted for about an hour and a half to two hours.

Q. Was there anyone else present? A. There was not.

Q. Can you tell us with any more precision the time of the conversation? That is, the time of the year? A. It was in the winter, January or February. I couldn't be exact any further than that. 2727

Q. Now will you tell us what was said? A. DeMato said that our trucks were coming into the city and that the trucks would have to be covered by Local 807 men: he called a city man, and I told him we couldn't do it. He said it wasn't a matter of whether I could or couldn't, that we would have to do it, and he suggested the best way to avoid any difficulty was to sign an agreement or

contract, which he removed from his pocket, and I examined the contract and handed it back to him.

Q. That is, a form of contract? A. Yes. It was about the same form of others I had seen later. I wouldn't think there was any difference between that contract and the one I eventually signed. However, he met with an absolute refusal on my part because I didn't think we should permit the payment to be——

The Court: No, never mind what you thought.

Q. Is this what you told him? A. I told him just that.

2729 Q. What? A. That I didn't think that we should pay, that we couldn't pay, that we would be forced out of the city if we were compelled to pay. He said we would be compelled to pay. The final result——

Mr. Boudin: I object to that.

The Court: Yes, strike it out.

Q. Just the conversation. A. The conversation ended by my refusal to sign the contract and he said his trip was in vain and I said it was. However, that didn't end the conversation completely because he agreed to make another——

The Court: No. What did he say?

2730 Q. What did he say?

The Court: Strike out "he agreed." What did he say?

The Witness: He said that he would make another arrangement with us where he would cover our trucks for a flat payment amounting to $3 per truck and guaranty the unloading of three trucks

a day, and could we agree to that. I didn't agree to that, but I said that if we had to pay that would be the maximum. However, nothing ever came of that. He left and that ended that conversation.

Q. Now, after that conversation, did your trucks make deliveries in New York City regularly? A. Not regularly.

Q. How many deliveries did they make? A. Immediately after that I began to have a lot of trouble.

Mr. Boudin: One moment. I move to strike it out.

The Court: Strike it out.

2732

Q. In the weeks following that conversation do you remember approximately how many truck loads of merchandise you sent to New York City? A. Not more than two a day—not more than two a week; two truck loads a week.

Q. In the weeks before that do you remember how many you had sent? A. Yes. Our operation prior to that was five or six truck loads per day.

Q. That is, do you compute a six-day week in your operation? A. That would be on the basis of a five-day week.

Q. How many trucks a week approximately during the weeks before that conversation did you send to New York? A. That would be twenty-five to thirty trucks per week on the average.

2733

Q. For how long a period did you continue to send only two or three truck loads of merchandise a week into New York City? A. Well, sir, during the months of January and February our operations fell off to almost——

The Court: No.

Mr. Boudin: I object to that.

The Court: Strike it out. Repeat the question. Address yourself to the question.

Q. (Read.) A. During January and February and the first part of March.

Q. Were there any weeks when you sent less than two or three truck loads? A. I can't say exactly, Mr. Marks, due to the fact that I don't have complete records, but I could say there were some weeks we didn't send any.

Q. That is, some weeks during January and February and up to the early part of March? A. Yes, sir.

Q. During that period, by the way, did you go to New York City yourself? A. No.

Q. During that period did you receive any telephone calls from New York City? A. Yes, sir.

2735 Q. From whom?

Mr. Boudin: I object to that as calling for a conclusion.

The Court: Did you receive a telephone call from anyone whose voice you recognized?

The Witness: Yes, sir.

The Court: He may state.

A. Joe McCaffrey.

Q. Had you met Joe McCaffrey up to that time? A. No.

Q. Have you met him since? A. I have.

Q You now know his voice? A. I do.

The Court: Do you now know that the voice you

2736 heard in that telephone conversation was the voice of McCaffrey?

The Witness: Yes, sir.

Q. Can you tell us about when that conversation was? A. That conversation was prior to March of 1938.

Q. About how long before March? A. I couldn't say definitely, and the reason I say "prior to" is due to the fact that certain things happened about that time that I am very familiar with.

Q. In other words, you can place it by certain other events? A. That is right.

Q. Around the end of February? A. That is correct.

Q. What did McCaffrey say to you and what did you say to him in that telephone conversation?

Mr. Boudin: Objected to, if your Honor please.

The Court: I will allow it subject to the observation that the jury will disregard it entirely unless, one, they are satisfied by the required measure of proof in this case that a conspiracy existed and is established; two, that this conversation was had in furtherance of that conspiracy, and three, only as to those defendants, if any, whom the jury find, if 2738
they do, to have been in the conspiracy, and that the conversation was had during the existence of any conspiracy that you find to exist.

Mr. Boudin: I respectfully except to the allowance of the question.

The Court: Proceed.

The Witness: The question?

Mr. Marks: May we have the last question read?

The Court: Yes, repeat it.

Q. (Read.) A. Well, sir, McCaffrey told me that they had sent a man down——

Q. Told you that? A. Told me that they had sent a man down to Uniontown and that the trip was without 2739
result, and what were we going to do? I told him that we wanted to operate, but I could not operate under the conditions as explained to me by the man he had down here, DeMato; and that conversation was left open without anything at the end coming from it, because he said he would send a contract down and for me to sign it.

Q. Go ahead. Have you told us all of the conversation that you can remember? A. Well, sir, the contract was sent down and I——

Q. No, no.

Mr. Boudin: I object to that.
The Court: Yes, strike it out.

By the Court.

Q. Have you told us all the conversation you now remember that you had with McCaffrey over the telephone on that occasion? A. At that time, that is about the extent of the conversation; I reduced it to about the essentials, and I can't remember anything further at this point about that conversation.

2741 *By Mr. Marks.*

Q. Can you remember whether anything was said in that conversation about your talks? A. In that particular conversation, I don't think so.

Q. Did you have any further telephone conversation with McCaffrey? A. Oh, yes, many of them.

Q. Well, did you see McCaffrey? A. Not up to that time.

Q. After that? A. After that; yes, sir.

Q. How long after that telephone conversation which you described to us? A. I saw McCaffrey and Cahill at Uniontown in the early part of March, 1938.

Q. Now, between the time that you first saw him and the telephone conversation which you have just described,
2742 did you have any further telephone conversations with him? A. Yes. You are asking me about a conversation, but something happened in between there. There was a contract——

Mr. Boudin: One moment.
The Court: No, no.

A. (Continued) I had other conversations with him; yes, sir.

Q. How many?

The Court: The question was whether you had any other conversation with McCaffrey between the first telephone conversation you have referred to and the time that he came to Uniontown with Cahill.

The Witness: I did.

Q. How many? A. At least one that I can remember. Possibly more, but at least one, one particular one.

Q. Now, will you tell us what was said in that conversation? A. Yes, sir——

2744

Mr. Boudin: Objected to, if your Honor please.

The Court: What?

Mr. Boudin: I say we object to that. I take it there is the same ruling?

The Court: Yes.

Mr. Boudin: I take an exception.

The Court: Yes; it is received under similar conditions.

Mr. Marks: May we have the last question?

The Court: Yes.

Q. (Read.) A. The next conversation, McCaffrey called my office at Uniontown in the morning, early. I would say about 7 o'clock, and he was very short and specific in his statement. He said, "You have sent your foreman down here, Mr. Deal, and we don't want any more of Deal and we don't want any more of you." That is what I can remember of that conversation. 2745

Q. Can you remember what you said? A. No, I don't remember what I said.

Q. Is that all you can recollect of the conversation? A. Yes, sir; that is all I can remember of that particular conversation.

Q. Now, do you remember whether there were any other telephone conversations between this one that you have last described and the first time that you saw McCaffrey? A. The only telephone conversations were my attempt to contact——

The Court: No, no. The question was——

A. (Continued) No more conversation——

The Court: Strike that out. The question was whether you remember any other telephone conversation between the visit McCaffrey made to Union town——

2747 The Witness: I don't remember any other telephone conversation.

Q. Now, do you remember when you first saw McCaffrey? A. Yes, sir.

Q. Do you remember the date? A. Not the date, but the approximate time.

Q. When was that? A. In March of 1938; the early part of March.

Q. And who was with him when you saw him? A. Michael Cahill.

Q. Anyone else? A. George Beatty, the president of the B. & B. Transportation Company, Inc., of Uniontown.

Q. Anyone else? A. That is four. That is all was there

2748 Q. Where did you first meet the three of them? A. I met them at the Lafayette Tavern located on Peters Street in Uniontown, Pennsylvania.

Q. Now, before you met them there had you received any telephone call from Beatty? A. I did.

Q. About what time did you meet them? A. About 5 P. M. that afternoon, a Saturday afternoon.

Q. Do you remember how long you remained together? A. We remained together for a period of—we ate supper together—for about two hours.

Q. Now, can you recollect in substance the conversation that took place at that meeting? A. Yes, sir. I remember that meeting very well.

Q. Can you tell us, as best as you can now recollect it, that conversation? A. Well, sir, George Beatty took the lead, and he introduced me to these two boys from New York. That is the way he introduced me. He did not introduce them by name. To the 807 men——

Q. Excuse me, Mr. Spackman. A. Yes.

Q. Will you stand up and look around the court room and tell us if you see here any of the participants in that conversation? A. (Standing) I have already recognized one, Mr. Marks. The other man I do not see. I see Mr. 2750
Michael Cahill, the third man to the right.

The Court: Which row?

The Witness: In the first row. The man on the end there (indicating).

Mr. Boudin: Well, we will concede that is the defendant Cahill, if your Honor please.

The Court: All right.

Mr. Marks: Thank you. The record may then show, your Honor, that the witness has identified the defendant Cahill?

The Court: Yes.

The Witness: And Joseph McCaffrey I do not see, although he may be here.

2751

Q. Do you want to look around any longer to make sure? A. Not unless you want me to.

Q. Well, just look around and see if he is here. A. No, sir; I do not see Joe McCaffrey.

Q. Now, you started to say that Beatty introduced them as the two boys from New York? A. Yes, the two boys from New York, and made it a particular note that they were the union boys, 807. They all called them union

boys. They did not call them 807; they said union boys; and that is the way I met them, as the union boys from New York. And, as I recall, we sat down and chatted about nothing in particular there for awhile, and I said, "Well, who are we talking to?" And Michael Cahill allowed me to see his union membership, the 807 membership.

Q. You mean his union book? A. Well, I think, as I remember, it was a card.

Q. You looked at it? A. Yes, sir; I looked at it. Now, I am not saying whether it was a card or a book, but nevertheless it said Michael Cahill, and he was undoubtedly——

2753

Q No. Just tell us what you saw on it. A. And I saw on there that it was a book of 807, and that he was a member of Local 807, and I asked the other man, I said, "How about your credentials?" and he said it didn't matter. I said, "Well, I like to know who I am speaking to and whether you have the authority to talk here." However, he shook me off on that, and I didn't know at that time who he was until he pulled a letter out of his pocket. We had been talking about Murray, Murray being down to Uniontown——

Q. Murray being what? A. Murray being down to Uniontown. The other Murray I referred to.

Q. Excuse me. Whom did you refer to? A. DeMato.

Q. DeMato? A. Yes.

2754

Q. What was his first name? A. Murray DeMato was the name on his card. All right. Well, this man, the second man who I know is Joe McCaffrey now, he pulled a letter out of his pocket and it was addressed to J. W. Murray, and he said, "I am Murray," and from then on I knew him as J. W. Murray and for a long time after that.

Q. How long? A. At least a year.

Q. All right. Go ahead. A. Well, we got down to business there, and they stated that they realized that this matter of making payments was a two-sided proposition, and it had to work both ways, and they made an agreement with us. That is, they had already made an agreement with Beatty; they let me in on that agreement that had already been made.

Q. Did they tell you about the agreement that had been made with Beatty? A. Yes. When I say, "Let me in on it"—this had already been cut and dried before I got there, because they had been in conversation all afternoon.

Q. What did they say about the agreement they made with Beatty? A. They said they made an agreement 2756
whereas we were to pay $4.50 per truck unloaded and $5.50 per truck for the trailers. Well——

Q. That is, $4.50 for the so-called straight job? A. The so-called straight jobs, $4.50, and $5.50 for the trailer.

Now, did they say that that was the agreement with Beatty? A. They said that they had already agreed with Beatty for that. Well, Beatty was my strongest competitor, and naturally anything that Beatty done, if I wanted to do business, naturally I would have to go along if I wanted to continue in business. Therefore, the final upshot of that was that I agreed to do the same as Beatty had already agreed to do, $4.50 for a straight job and $5.50 for a trailer.

Q. Whom did they say the money was to go to? A. 2757
Well, they wanted the money to be sent down by our drivers in cash. However, I bucked on that, and, as a matter of fact, I refused to send it down that way. Then we agreed between us that we would make up a statement each week wherein we showed the truck number, the driver's name, where the load was consigned to and the amount of payment to Murray—Murray was the only man I ever dealt with; anything I say, I was dealing with J. W. Murray.

Q. But Cahill was there throughout? A. Cahill was there, but I never had any business dealings with Cahill at any time, then or now—not now; I am wrong on that last part. Now I do. But, in any event, as far as this was concerned, it was J. W. Murray. The statement was to be made totalled——

Mr. Boudin: If your Honor please, at this point, I object to further examination on that line on the ground it is not binding on any of the defendants.

The Court: Overruled.

Mr. Boudin: Exception.

2759 The Court: I am taking it subject to the observation that I made to the jurors a few moments ago.

A. (Continued) This statement was to be prepared weekly on Saturday and the amount totalled and a check for that amount made up and forwarded to J. W. Murray at a given address in New York.

Q. Now, did Murray give you anything at that time? A. Yes, sir.

Q. What did he give you? A. Murray gave me a slip of paper, in which he had written on two telephone numbers.

Mr. Marks: May I have that marked?

The Court: Yes.

2760 (Marked Government's Exhibit 19 for Identification.)

Q. I show you Government's Exhibit 19 for Identification and I ask you if you have seen that before? A. I have.

Q. Where and when did you first see it? A. I first saw that in the early part of March, 1938, in the Lafayette Tavern at Uniontown, Pennsylvania.

Q. Is that the slip of paper that Murray gave you? A. That is the exact slip.

Mr. Marks: I offer it in evidence.

The Court: Show it to the other side.

(Paper handed to defense counsel.)

Mr. Maguire: Objected to on the ground that it is not binding on the defendants.

The Court: Overruled.

Mr. Maguire: Exception.

The Court: I will take it subject to the direction that I gave, and so far as the defendant union is concerned, of course subject to proof of ratification by it.

(Government's Exhibit 19 for Identification received in evidence.) 2762

Mr. Marks: May I read the writing to the jury?

The Court: Yes.

Mr. Marks: This slip of paper, ladies and gentlemen, has the following words: "8:00 A. M., 5:00 P. M., Canal 6-9444, Laight Street and West Street. After five call Gramercy 7-3722."

Q. Was there any conversation about this slip of paper, Government's Exhibit 19? A. Yes, sir.

Q. Tell us about that, please.

Mr. Boudin: That is objected to on the same ground.

The Court: Overruled. 2763

A. The conversation surrounding that slip was that these trucks in arriving at New York must have a place to report and, inasmuch as Eastern States Transportation Company didn't have a terminal, this Mr. J. W. Murray, otherwise Joe McCaffrey, had arranged to have us call this number at Canal 6-9444, Laight and West Streets, at any time on arrival of the truck from 8 A. M. to 5 P. M.

Q. Do you know that telephone number on this? A. Yes, I do. I found out since that it is the Beach Transportation Company number; at least, it is the location of the Beach Transportation Company number, at that point, Laight and West Streets.

Q. Now, what else did he say about it? A. Well, the truck drivers were to report to that number and then await further instructions from J. W. Murray as to what they were to do. In other words, if the trucks would report from Jersey City where he wanted them to stay, they would stay at Jersey City until he got ready to handle them. In other words, he didn't want the trucks—he said
2765 he didn't want the trucks running wild throughout New York because of several reasons. The first is, they wanted to cover the trucks; secondly, he didn't want some of the other members of the union to get these trucks. He wanted them. He made that very plain.

Q. Can you recollect anything else? A. Well, as far as that particular number is concerned, that, I believe, covers that; that particular number.

Q. Now, with respect to that part of the conversation which dealt with money: Was there anything said about work to be done by Murray or Cahill or anyone else in New York City? A. Well, of course, it was our understanding——

Q. No. Just tell us what was said, Mr. Spackman, by all of the parties in the conversation. A. Of course, what
2766 was said was reduced to our understanding.

The Court: No. The jury will have to determine what the understanding is.

The Witness: Well, they were——

The Court: They want to know what the facts are.

The Witness: Yes, sir. Thank you. They were to unload the trucks for those amounts.

The Court: Who said that?

The Witness: Mr. J. W. Murray, otherwise Joe McCaffrey, did all the talking. He did the entire amount of the talking, and he said that, but, however, it even goes further than that: This report that we were compelled to make and send in with the check——

Mr. Maguire: I move that it be stricken out.

The Court: Strike it out. Strike out "that we were compelled to make." This report——

The Witness: This report that we made was to include trucks that were shipped from Uniontown.

2768

Q. It was to include all trucks shipped from Uniontown? A. All trucks, regardless of whether they were covered or not; the understanding was that the trucks would be covered by the 807 men in New York. However, they got paid whether they covered that truck or not, because a statement was sent——

Mr. Boudin: I move to strike it out.

The Court: Strike it out.

Q. Was there anything said in that conversation as to whether they were to be paid? A. Absolutely.

The Court: What was said?

The Witness: They demanded payment for every truck that was sent out of Uniontown and we made the report on that basis. 2769

Q. And did they say whether or not they would work on every truck? A. Well, I tried to reduce my statement to an understanding here, but, however, you won't let me say that.

The Court: You tell us what was said, and we have an agency here that will reduce it to its normal conclusion.

The Witness: That was said, that they would cover every truck.

Q. Was there anything said about whether the payments would be for each truck worked by them? A. No, sir. It was said that for each truck sent out of Uniontown, or not only Uniontown, but any point we shipped from in western Pennsylvania, we made the payment to them on the basis of the trucks that went out.

2771

Mr. Boudin: Now, I move to strike out beginning with "we made."

Q. Is that what was said?

The Court: Just a minute. It couldn't have been said because it is in the past tense.

Q. What was said about that? A. The entire conversation results in what——

Q. No, Mr. Spackman. Just tell us what you said and what they said about these payments; not the result. A. I am trying, Mr. Marks, to the best of my ability.

Q. I know, but just tell us what was said. A. Well, what was said was, coming back again to the point, $4.50 per truck and $5.50 per truck shipping from Uniontown or from western Pennsylvania. That is what they said.

2772

The Court: What was said as to what would be done for that, if anything?

The Witness: They were to unload our trucks in New York.

Q. During the early part of that conversation was there anything said in general about your trucks continuing to go into New York City?

Mr. Boudin: I object to that as immaterial.

The Court: I will sustain the objection.

Mr. Marks: On the ground that it is immaterial, your Honor?

The Court: No, sir.

Mr. Marks: I didn't think so.

Q. Have you told us all of the early part of that conversation? A. No, sir. I missed a part of it. The early part of the conversation or, in fact, the first part of our conversation was surrounding the fact that—it was surrounding my objections to having any dealings then. 2774

Q Now, what was said about that? A. You mean what I said?

Q. What you said and what they said.

Mr. Boudin: Now, if your Honor please, I object to that as having been gone into.

The Court: Overruled.

Mr. Boudin: Exception.

A. I very violently said that I didn't want any arrangement. I said that my men were all members of the A. F. of L. local and paid their dues in Uniontown and I demanded that they should recognize my boys' union cards in the City of New York or, in fact, any place in the United States, as I put it, and I said I could not see any reason why, living in the United States of America, that we should have to pay those fees. Joe McCaffrey answered me, saying, "Well, we hold the cards." He said, "We are going to collect." He said, "Otherwise, you don't operate in New York." 2775

Q. Cahill was present throughout that conversation? A. Cahill was there, but he said nothing.

Q. Now, have you told us all of the conversation that you recollect? A. Well, I told you I finally agreed——

The Court: No, don't tell us what you agreed; tell us what you said.

The Witness: I said that I accepted their terms. The terms were as I stated.

Q. After that conversation did you send trucks into New York City? A. Yes, sir.

2777 Q. How many trucks did you send in the following week, if you remember? A. Our business picked up immediately and we began to get back into our normal movement of five and six trucks per day, and, as a matter of fact, it exceeded that from then on for quite a period, as nearly as I can recall, without the records at my finger tips, but I know our business increased greatly.

Q. Did you make any payments to any of these men? A. Well, we started making payments on the 13th of April, I believe is the correct date—the 13th of April, 1938, and continuously thereafter.

Q. Do you know, Mr. Spackman, the total amount of the payments you made between the time of the conversation and May 31, 1938? A. That was only a short period, but there were $340.

2778

Mr. Boudin: Wait a moment. I think the question calls for a yes or no answer, and I move to strike it out.

The Court: The answer is yes, I take it. Strike out everything after that.

Q. Will you tell us what that figure is? A. The figure up to and including May 31, 1938, was $340.

Q. And how long a period was that exactly?

The Court: Well, I will exclude that. From the 13th of April to the 31st of May? A child can determine how long it was. Go ahead.

The Witness: $340.

The Court: Well, you have said that. Next question.

Q. Did you see McCaffrey again up to the end of May? A. I don't think so.

Q. Did you see Cahill? A. No. They were always together.

2780

The Court: Well, the question was whether you saw them.

Mr. Boudin: I move to strike it out.

The Court: Did you see either one of them?

The Witness: No, sir.

The Court: After that conversation up until May 31st of that year?

The Witness: Up until May 31st of that year I didn't see either one of them, to the best of my knowledge.

Q. Did you have any telephone conversation with either of them? A. Yes, sir.

Q. Do you remember the first such conversation after this meeting in Uniontown? A. No, I can't. There is a jumble of telephone conversations, a lot of them in that period. 2781

Q. Do you remember in what form you made out the early checks? A. Oh, yes.

Q. Whom were they payable to?

The Court: No.

Mr. Boudin: I object.

The Court: I sustain the objection to that. The check speaks for itself.

(Mr. Marks hands papers to the clerk.)

The Court: How many papers are there in that packet?

Mr. Marks: Well, counting just the yellow slips and not the others attached to them as units, six.

The Court: Is there something attached to each?

Mr. Marks: Yes, there is a check attached to each.

(Marked Government's Exhibit 20 for Identification.)

2783

Q. I show you Government's Exhibit 20 for identification and ask you if you recognize each of these pieces of paper. A. I do.

Q. Is that your signature on each of the six checks? A. Yes, sir.

Mr. Marks: I offer them in evidence.

The Court: Show them to counsel.

(Mr. Marks hands papers to defense counsel.)

Mr. Boudin: May we know what is being offered, Mr. Marks? The checks or the other papers?

Mr. Marks: The entire.

Mr. Boudin: May we have them separated so that objections may be made separately to those things?

2784

Mr. Marks: I suppose we can do that, your Honor.

Mr. Boudin: I think it would be better for the record.

Mr. Marks: In that event, I suppose we had better mark them as separate exhibits.

The Court: Mark the yellow sheets with the checks attached to each yellow sheet Exhibits 20, 20-A, B and so on.

(Marked Government's Exhibits 20, 20-A, 20-B, 20-C, 20-D, 20-E for Identification.)

The Court: I would like to have the record show what particular papers are objected to. The way to do that is to have them sufficiently identified so that you can distinguish between those that may be and those that may not be objectionable.

Mr. Boudin: We object to these on the ground that they are irrelevant, immaterial and incompetent, no proper foundation laid, and not binding on any of the defendants.

The Court: Objection sustained.

2786

Q. Now, Mr. Spackman, having looked at Government's Exhibits 20 through 20-E for Identification can you recall a telephone conversation with McCaffrey in about the middle of May, 1938 (showing witness papers)? A. I can't recall that particular conversation, Mr. Marks. There were a lot of them.

(Marked Government's Exhibits 21, 22, 23 for Identification.)

The Witness: I do recall that, Mr. Marks.

Q. Look at Government's Exhibit 21 for Identification and see if that helps in addition to refresh your memory. A. Yes, sir. I had already refreshed my memory. I remember that conversation. 2787

Q. With whom was the conversation? A. The conversation was with Mr. J. W. Murray, or Joe McCaffrey, the same person.

Q. What was that conversation?

Mr. Boudin: Objected to, if your Honor please.

The Court: Overruled.

Mr. Boudin: Exception.

The Court: The same ruling.

A. The conversation centered around the manner in which our checks were drawn.

Mr. Boudin: If your Honor please——

The Court: Strike that out. What did Mr. Murray or McCaffrey say to you and what did you say to him?

The Witness: Mr. Murray—I objected in this conversation to making the checks——

Mr. Boudin: I object.

2789

The Court: What did you say?

The Witness: I said the checks were made payable to cash ,that we couldn't continue to make these checks payable to cash.

The Court: What did Mr. Murray say? Anything?

The Witness: Yes, sir. Mr. Murray said he wanted them that way, and I said I didn't want them that away and we started to make the checks out to J. W. Murray from then on for a period.

Q. Do you remember any telephone conversation about this time with Murray, McCaffrey or Cahill with respect to one Bernot? A. Yes, I do.

2790 Q. Do you know when that conversation took place? A. That took place in the spring of 1938. April, May, or March, April or May.

Q. It was after your meeting with them at the hotel in Uniontown? A. Yes, sir, shortly afterwards.

Q. With whom was that particular conversation? A. That conversation was between McCaffrey and myself.

Q. It was over the telephone, of course? A. Oh, yes.

Q. Will you tell us what was said on that occasion?

Mr. Boudin: Same objection.

The Court: When was it? Can you state the date any more specifically than you have?

The Witness: No, sir, I cannot. The conversation——

Mr. Boudin: Objection.

The Court: Overruled.

The Witness: —was that he did not want Bernot into New York any more.

Mr. Boudin: If your Honor please, I don't think the witness is detailing a conversation. 2792

The Court: You will have to speak louder.

Mr. Boudin: He is giving his conclusion.

(Question and answer read.)

The Court: Did somebody say that?

The Witness: Joe McCaffrey said that.

Q. Who was Bernot? A. Bernot was one of my operators.

Q. What is his first name? A. Frank.

Q. Yes. Proceed with the conversation. A. He said he was a trouble maker and he didn't want him in.

Q. What did you say? A. I agreed with him.

The Court: No. Strike that out. What did you say? 2793

The Witness: I said all right.

Q. Did you agree that he was a trouble maker or that you wouldn't send him in?

Mr. Boudin: I object.

The Court: Sustained.

Q. What did you say?

The Court: He said, "All right." That is what he testified to.

A. I said all right, but——

The Court: Anything else?

The Witness: There were several things said, your Honor, but I didn't mean that Bernot was a trouble maker when I made that statement. That was assumed.

2795 Q. Do you remember anything else in that conversation? A. I said all right. What I meant when I said "all right"—

Mr. Boudin: I object.

The Court: No, no. You said all right. Now, did you say anything else?

The Witness: I can't recall any more of that conversation.

Q. Did you ever have any conversation with McCaffrey or Cahill about any of your other drivers? A. Yes, sir.

Q About whom? A. Well, sir, there were two other drivers, one, Harold Wilhelm, and another one, J. E. Baker, which they objected to me against.

2796 Q. What did they say?

Mr. Boudin: I object. "They" doesn't mean anything.

The Court: Sustained.

Mr. Boudin: I move to strike it out.

Q. With which one did you have the conversation? A. With Joe McCaffrey. The conversations were always with Joe McCaffrey.

Mr. Boudin: I make the same objection, your Honor, to the conversation.

The Court: Overruled.

Mr. Boudin: Exception.

Q. What was said? A. They said they objected on the same basis they objected to Frank Bernot. They claimed they were trouble makers. That was their statement. Not mine.

Mr. Boudin: If your Honor please, I move to strike out, "That was their statement."

The Court: Strike it out.

The Witness: McCaffrey's statement, is what I meant. 2798

By the Court.

Q. What did he say? He must have used some language so that you could get some idea of what he meant. Now, what did he say to you? We don't want your conclusion. We want the facts. A. Your Honor, I am trying to do it.

Q. All right. Tell us what he said. It is very simple, isn't it? A. He said they didn't want them in. That is what he said.

Q. Well, did he say anything else? A. He said that they were trouble makers.

Q. What did you say? A. I said O.K. All right.

By Mr. Marks. 2799

Q. Did he say what he meant by that? A. I knew what he meant.

The Court: Excluded.

Mr. Marks: I was asking that part of the conversation——

The Court: I heard your question and I excluded it of my own motion.

Q. Did he say anything else about them? A. Well, sir, what I have told you is the way it was.

The Court: That is all you remember?
The Witness: That is all I remember.

Q. Did you continue to send Bernot into New York City after this conversation? A. No. We held him up awhile, and eventually——

Mr. Boudin: One moment.
The Court: Strike out after "No."

2801 Q. Did you continue to send Wilhelm into New York City after that conversation? A. Yes, sir.

Q. Continuously? A. Yes.

Q. Did you continue to send—was Baker the other one? A. Baker—we didn't send him.

Q. Was the third name you mentioned before Baker? A. Yes, it was the third name.

Q Did you continue to send him into the city? A. No.

Mr. Marks: That is all.

Cross-examination by Mr. Boudin.

Q. Mr. Spackman, I show you these two checks which are in evidence as Government's Exhibits 16-A and B, and
2802 ask you to look at them and see whether you can recognize them as having seen them before? A. Yes, sir; I have seen them before.

Q. And do they bear your endorsement? A. Yes, sir.

Q. Do you remember the circumstances under which you saw them? A. I do.

Q. Will you state them? A. In connection with these two checks, they were mailed to me by air mail after Mr. Joseph McCaffrey told me that he was sending them.

Q. That he was what? A. After Mr. Joseph McCaffrey told me that he was mailing them by air mail from New York to Uniontown. Then he asked me if I would take these checks down to the bank in Uniontown and cash them for him.

Q. Did you go down to the bank with those checks? A. They were sent down; I did not do that personally.

Q. Did you try to collect them through the bank? A. Sir?

Q. Did you try to collect them through the bank? A. Yes, sir; they were both presented at one time, and one was good; the other one was not good at that time.

Q. I show you this paper which is in evidence as Defendants' Exhibit E—— 2804

Mr. Cahill: As I recall, that paper is not in evidence.

Mr. Boudin: Excuse me.

The Court: Exhibit E is for identification.

Mr. Boudin: Yes, you are right.

Q. I will ask you if that bears your signature? A. Yes, that is my signature.

Q. Do you remember writing it? A. Oh, yes.

Q. And that was written when you could not collect the second check?

Mr. Cahill: I object to that. 2805

The Court: Sustained.

Mr. Boudin: Exception.

Q. Well, was that written in connection with either one of these checks or both of them?

Mr. Cahill: And I object to that.

The Court: Sustained.

Q. Are the statements made in this paper writing, which is in evidence as Defendants' Exhibit E for Identification——

Mr. Cahill: I object. It is not in evidence, your Honor.

Mr. Boudin: I said it is marked Defendants' Exhibit E for Identification.

The Court: No, you said it was in evidence.

Mr. Boudin: I did say that, if your Honor please.

The Court: That was an error, I am sure.

Mr. Boudin: That was an error and I apologize for it.

2807

The Court: Oh, you do not need to apologize.

Mr. Boudin: As a matter of fact, it could not be both in evidence and for identification.

The Court: Yes, it could.

Q. This paper which I think is marked Defendants' Exhibit E for Identification—I ask you whether that letter contains a true statement of the facts as you knew them at the time you wrote the letter?

Mr. Cahill: I press my objection.

The Court: Sustained.

Mr. Boudin: Exception.

2808 Q. Did you, Mr. Spackman, do the things mentioned in this paper writing before you wrote it?

The Court: I will exclude that question before you finish it.

Mr. Cahill: And I ask for instruction that there be no further reference to the contents of instruments not in evidence.

The Court: You cannot get the contents of a document in evidence unless you offer the document.

Mr. Boudin: If your Honor will permit me, I have not asked about the contents itself.

The Court: Now, I have excluded the question. Put your next question.

Mr. Boudin: Yes, but I am trying to explain that I am trying to authenticate it in order to be able to offer it in evidence.

The Court: You need not authenticate it for my benefit.

Mr. Boudin: All right; I will offer it now.

The Court: All right; that is the proper thing. Hand it to counsel, because having already been marked for identification, the clerk need not do it 2810
again. The clerk has too much to do already.

Mr. Boudin: I was not offering it for identification. I said I offered it in evidence.

The Court: Well, you handed it to the clerk.

Mr. Boudin: I am sorry.

Mr. Cahill: We object to it.

The Court: Now, I would like to look at it.

(Handed to the Court.)

The Court: Objection overruled.

(Defendants' Exhibit E for Identification received in evidence.)

Mr. Boudin: May I read it to the jury now?

The Court: Yes, certainly.

Mr. Boudin: This paper, which is now in evi- 2811
dence as Defendants' Exhibit E, is on the stationery of Eastern States Transportation Corporation, 87 Pennsylvania Avenue, Uniontown, Pennsylvania, and is dated May 11, 1938, and is addressed to Mr. J. W. Murray, 508 East 12th Street, New York City, and reads as follows (reading Exhibit E to the jury). That is all.

The Court: Do any other counsel for the defendants desire to cross-examine?

(No response.)

The Court: Is there any redirect examination?

Mr. Ennis: No, your Honor.

The Court: That is all, Mr. Spackman. Next witness.

(Witness excused.)

Mr. Marks: I will call Mr. Bernot.

FRANK BERNOT, residing at Cardale, Pennsylvania, called as a witness on behalf of the Government, being duly sworn, testified as follows:

2813

Direct examination by Mr. Marks.

Q. Mr. Bernot, will you please keep your voice up so the last gentleman here in the jury box can hear everything you say? A. Yes.

Q. Where are you employed now? A. Eastern Freight Line.

Q. A little louder. A. Eastern Freight Line.

Q. Do you drive a truck for them? A. Yes, sir.

Q. Where were you employed in the end of 1937? A. Eastern States Transportation out of Uniontown.

Q. Do you remember when you began to go to work for them? A. The early part of 1936, about February.

2814 Q. How long did you work for them? A. Ever since 1936. Gradually; I went off and on.

Q. That is, you did not work steadily? A. Gradually, you know, just a few weeks at a time.

Q. Did you own your own truck? A. Yes, sir.

Q. And you drove it? A. Yes, sir.

Q. Can you tell us what arrangement was made between you and Mr. Spackman of Eastern States with respect to your truck?

Mr. Maguire: Objected to as immaterial.
The Court: Sustained.

Q. Now, what run did you make in 1937? A. Well, we traveled all the eastern parts, from Uniontown out this way. We covered New Jersey, New York, Baltimore and Delaware.

Q. In calling to New York, was there one place in the city that you went to more than others? A. The most usual place would be the Long Island Warehouse.

Q. Of what company? A. Richmond Radiator.

Q. And what did you haul to the Richmond Radiator Company? A. Mostly, in fact, all our material to Richmond Radiator would be enamel ware, household equipment, plumbing goods, such as bath tubs, sinks, lavatories, and so on. 2816

Mr. Marks: Excuse me, your Honor. I don't know if the jury and counsel for the defendants can hear the witness.
Mr. Boudin: I am sure we can't.
Mr. Marks: May we have the last answer read?
The Court: Yes.
(Answer read.)

Q. Now, will you try, Mr. Bernot, to talk a little louder so that everybody can hear you? A. Yes.

Q. When you drove to the Richmond Radiator Company who unloaded your truck at the warehouse? 2817

Mr. Maguire: I ask that the time be fixed.
The Court: Yes, fix the time.

Q. In 1937. A. What part in 1937 do you wish to have?

The Court: Well, what part would you like to tell us about?

The Witness: Well, practically, I can tell you, Judge, the beginning of 1937 all throughout the year.

Q. Well, was there a time in 1937 when there was any change made in the manner in which the deliveries were made at the Richmond Radiator Company? A. Yes, Judge.

Q. When was that? What date? A. I couldn't exactly tell you the date, but it was during the summer months.

Q. 1937? A. Yes.

The Court: Well, you think it over during recess and tell us when you come back what happened
2819 before that date and what happened afterwards.

(Short recess.)

By Mr. Marks:

Q. Mr. Bernot, will you describe to us the procedure that was followed in unloading your trucks before the summer of 1937? A. Before the summer?

Q. Yes.

The Court: The summer.

Q. I mean at the warehouse of the Richmond Radiator Company. A. Would you mean before the time we had—

By the Court.

2820

Q. No. You said there was a time in the summer when the process changed. A. During the summer months?

Q. Well, tell us before the change how you unloaded your trucks at that warehouse. A. We would come up to the warehouse any part of the day from 8 o'clock till 4.30——

Q. A little louder. A. 4 or 4.30—I don't exactly remember the hours; but I would always get unloaded.

Q. Well, you backed in? A. Well, we back in first to get unloaded.

Q. And was there a platform there? A. Yes, sir.

Q. And where was the platform with respect to the floor of the truck? A. Backed in towards the platform.

Q. Well, was the platform of the warehouse and the floor of your truck substantially on a level? A. Could you explain that, Judge?

Q. Well, when you backed your truck up to the platform, was the bottom of your truck level with the platform? A. It was slightly higher.

Q. Higher? A. Slightly higher.

Q. Now, who took the merchandise out of the truck? 2822
A. We would back up and let the tail gate down, and the man on the platform, they just run trucks right in, hook on the merchandise and take it inside the warehouse.

Q. Who put the merchandise on the truck, on the little truck? Did you do it or did somebody else do it? A. Do you mean the hand truck?

Q. Yes. A. Well, like parts from the top that was stacked above, such as small articles, I reached them from the top and set them on the floor, and they would get the hand truck right under it there and take it away.

Q. Well, did you help to unload? A. Just articles on the top that was stacked up.

Q. The rest of the articles somebody else took out of the van or the truck? A. Yes, because it was more easier for them to get under the way it was. 2823

Q. Well, did the time come when the method of unloading changed? A. What change would you want, Judge?

Q. I want to know whatever change there was. Is that the way you unloaded all the time? A. No, I did not. We hoped to do it, but we did not.

Q Well, when did the time come when you did it any differently? A. Well, it was just before they had set in —

Q. Well, tell us the time. A. I can't exactly tell you the time.

Mr. Boudin: If your Honor please, may we have the witness speak a little louder?

The Court: Yes.

Q. Did you say it was during the summer? A. During the summer months.

Q. All right. Now, talk a little louder so that all of the jurors and counsel can hear what you say. A. It was during the summer months as well as I can remember.

Q. Now, what change was made? A. Well, the change
2825 was, the city men, they planned a union here and they were to——

Q. No, never mind about what they did here. What we want to know is what was done over at that platform, what change was made at that platform, if any, in unloading your trucks? A. At that platform, later come some fellows around my truck, that they wanted——

Mr. Maguire: I object to that and move that it be stricken out.

The Court: Strike it out.

A. (Continued) They wanted a day's labor of unloading me——

Mr. Maguire: I move that it be stricken out, sir.
2826 The Court: Strike it out.

By Mr. Marks.

Q. What did they say?

Mr. Maguire: Objected to.

The Court: Sustained.

A. I——

Mr. Marks: Don't answer. May I submit that the authority of the Fur Workers case would allow this testimony?

The Court: Listen, I have read the Fur Workers case. That is Judge Swan's case, and I commented on it to the jury.

Mr. Marks: Yes.

The Court: All right.

Mr. Marks: May I argue on it on the basis——

The Court: No. You had better get a basis to argue on first. You want to argue the law before you have developed the facts. Now, let us develop the facts here. This witness said that there was a 2828
change made in the method of unloading, or, at least, I so understood him; and I want to find out if there was, unless you want to develop it differently, and unless you do not want to develop your case that way; and if you do not, I will let you develop it in your own way; but I am trying to find out what change was made, if there was any made, in the manner in which the truck was unloaded. That is a very simple question. I am merely talking about unloading trucks and nothing else.

By the Court.

Q. Is that clear to you, Mr. Bernot? A. Yes, sir, Judge.

Q. All right. Now, did there come a time when the 2829
truck was unloaded in any different way than the way you have already described? A. Well, it was the same manner of backing in and unloading the same truck.

Q. Well, did you do the unloading or any of it? A. Well, I always planned to do it, and many times——

Q. Well, did you do it? A. Many times I did.

Q. Were there times you did not? A. There were times I did not.

Q. Well, now, when you did not unload, who did? A. Many times I pulled away too and would not come back until the next day.

The Court: All right; you can examine.

Q. Who did unload when you did not after the summer of 1937? A. There was a couple of city men around that place at that time.

By the Court.

Q. Well, did they unload? A. Well, when I was forced to do it——

2831

Mr. Boudin: I move to strike it out.

The Court: Just answer the question. Strike out the answer.

Q. Did these persons you referred to as city men, did they unload your truck? You can answer that yes or no, can't you? A. Well, that would not very well fit my answer, Judge.

The Court: I see.

By Mr. Marks.

Q. Well, can you tell us what happened at the platform after the summer of 1937 on those occasions when you did

2832 not unload yourself? A. Well, somebody else up around there, some city men—at least, they claimed they were—they wanted the day's labor of unloading, and that was the time that I——

Mr. Maguire: I object to anything further.

A. (Continued) And that was the time I let them do it——

Mr. Maguire: I move to strike it out.

The Court: Strike it out. You better find out if he can identify anybody who was there at that time.

Q. Will you stand up, Mr. Bernot, and tell us if there is anybody in this court room that you have seen around that warehouse? A. You mean the early part of 1937?

The Court: Any time at all.

The Witness (standing): You have so many faces here it is hard to pick them out.

Q. Take your time. A. Well, I believe I only recognize 2834
one face there.

Q. Where is he sitting? A. Towards the right on the first bench, middle of the bench.

By the Court.

Q. Do you know his name? A. Well, his name is Mike, the first name, as far as I know.

Q. Is that the man that just stood up? A. Yes.

Mr. Marks: May the record show that Michael Cahill stood up?

The Court: Yes.

By Mr. Marks. 2835

Q. You don't see anyone else now? A. I don't recognize anyone else just now.

Q. All right. Sit down. Now, can you say approximately when for the first time you saw, as you call him, Mike? A. Yes; I can say the later part of 1937——

Mr. Boudin: I can't hear, if your Honor please.

The Court: You will have to speak a little louder.

The Witness: Yes, I can say the latter part of 1937.

Q. Do you remember approximately what month? A. No.

Q. Now, where did you see him for the first time? A. The warehouse.

Q. Which warehouse? A. The Long Island warehouse in Long Island City.

Q. That is the Richmond Radiator Company? A. Yes,
2837 sir.

Q. Did you have a talk with him? A. Yes, they talked and I talked——

By the Court.

Q. Was there anybody with him? A. He had a few other fellows with him at that time, but I——

Q. Did you know any of those other men then? Did you ever get acquainted with any of them afterward? A. Not that I know of, Judge.

Q. Did you ever come to know any of them by name? A. Well, there are a few other names that was along with Mike; that is later I got acquainted with them.

Q. Well, were those persons or any of them with him
2838 on the first occasion that you met him? A. Not as well as I can remember.

The Court: All right.

By Mr. Marks.

Q. Tell us what talk you had with Mike at that time. A. Well, they asked——

By the Court.

Q. You mean he asked? A. Yes, he asked who we are hauling for, and I told him exactly who it was.

Q. What did you tell him? A. The Eastern States Transportation out of Uniontown; and he asked me who was the owner of the truck, and I told him I was; and he told me that they are here to unload me; and I says, "It is up to the company for them to unload me."

Mr. Boudin: If your Honor please, we can't hear a word here.

The Court: Yes. The stenographer will repeat the answer. 2840

(Answer read.)

By Mr. Marks.

Q. Which company? A. Eastern States Transportation.

Q. What else was said? A. Nothing more important so far as I can think of.

Q. Did he unload you? A. I had to stand there for a while. Yes, he did.

Q. What did he do on the truck? A. Well, if he wanted to unload, I suppose just unload——

By the Court.

2841

Q. Well, did he unload your truck? A. No, not exactly by himself, I can say.

Q. Well, did he have any part in the unloading of it? A. Well, he had a little bit of my energy in there.

Q. A little bit of what? A. A little bit of my strength in there to help him unload.

Q. Well, did anybody else help him besides yourself? A. The platform man.

Q. Well, did any of the men that you saw with Cahill, did they help him unload? A. No, sir.

By Mr. Marks.

Q. What did the platform men do? A. They just run a truck onto it, put a hook on it and took it into the warehouse.

Q. The same as they did in 1937? A. The only difference was the truck—he got him towards the tail gate——

By the Court.

2843 Q. Who did? A. Mike, or any other city man that was there.

By Mr. Marks.

Q. But they did not take it off the truck? A. The ones in back, they would take them off, and the ones up ahead in my van, it was enough place there to turn around and run a truck right in, the hand truck.

Q. Did you give anything to Mike? A. Yes, it cost me a little bit labor charge there.

Q. How much? A. Well, for myself it cost me $9.42 the first time.

Q. Is that what you paid him? A. Yes.

2844 Q. Whose money was that?

Mr. Boudin: I object to that as immaterial and irrelevant.

The Court: I will allow it.

A. That money belonged all to me.

Mr. Boudin: What was the answer?

Mr. Marks: "That money belonged all to me."

Mr. Boudin: I move to strike that out.

The Court: Denied.

Mr. Boudin: Exception.

Q. Did you own any other trucks at that time? A. Just the one—you mean before 1937?

Q. At this time when you paid Cahill $9.42. A. Just the one.

Q. Do you own any others now?

Mr. Murray: I object.

The Court: Sustained.

Q. Do you remember the next time you saw him? A. 2846
For instance who?

Q. Cahill? A. Yes.

Q. How long afterwards? A. Well, we used to see him pretty steady up there.

Q. Every trip in?

Mr. Boudin: If your Honor please, I must ask your Honor to instruct the witness to speak a little louder. It is utterly impossible to hear him.

The Court: Yes. You will have to speak louder. People don't hear what you say.

Mr. Marks: May I give him some water, your Honor? It might help.

The Court: Yes. But don't wash the words down. 2847
We want them out. Have you got a cold?

The Witness: I am just low in speaking.

Q. Just take your time, Mr. Bernot, and try to keep your voice up so we will all hear you.

Mr. Marks: May we have the last question read?

The Court: Yes.

Q. (Read.) A. We used to see him pretty steady, and also some other man besides; if we would not see him, it would be somebody else.

Q. Did you pay any money on any other occasions? A. Could you explain that, please?

By the Court.

Q. How many times did you pay any money? A. A great number of times up to date.

By Mr. Marks.

2849 Q. Do you know anyone——

Mr. Boudin: I move to strike that out.

The Court: Strike out "up to date." Otherwise denied.

Mr. Boudin: I move to strike out the entire answer because apparently the great number refers "up to date."

The Court: Evidently you don't hear me any better than you hear the witness. I struck out the words "up to date" and said otherwise denied.

Mr. Boudin: Well, if your Honor please, we except to that.

The Court: Of course. The stenographer will
2850 note that.

Mr. Boudin: I should say that makes it worse than it was before.

The Court: Well, this is not the time for comment. Proceed.

Q. Each time that you paid him, whose money was it?

Mr. Boudin: Objected to as immaterial and irrelevant.

The Court: Overruled.

Mr. Boudin: Exception.

A. Money that belonged to me.

Q. Do you know the name J. W. Murray? A. I know the name.

Q. Do you know who that is? A. Well, it is a fellow that calls himself J. W. Murray.

Q. Did you ever see him with Mike Cahill? A. Well, he represented he was J. W. Murray; yes, he did.

Q. Did you ever see him together with Cahill? A. Yes.

Q. More than once? A. Yes, sir.

Q. Did you ever pay him any money? 2852

Mr. Boudin: Objected to as immaterial.

The Court: Overruled.

Mr. Boudin: Exception.

A. When he was unloading——

The Court: No. Just answer. Did you ever pay J. W. Murray any money?

The Witness: May I ask for some information on that?

The Court: Well, don't you know whether you handed any money to J. W. Murray or not?

The Witness: Well, if he unloaded my truck, yes, I did.

2853

By the Court.

Q. Did he ever unload your truck? A. Yes, he did.

Q. J. W. Murray? A. J. W. Murray. The fellow that calls himself J. W. Murray.

Q. Was the defendant Cahill there at that time? A. No.

Q. He wasn't there? A. No, sir.

By Mr. Marks.

Q. How long did it take on an average to unload your truck at this warehouse?

Mr. Boudin: Objected to as immaterial.

The Court: Overruled.

Mr. Boudin: Exception.

A. Approximately between two and four hours at the most.

Q. Did you ever have a talk with Cahill about some other trucks? A. He knew more about the trucks than
2855 I did.

The Court: Strike out the answer.

Q. Did you ever see any other trucks in the warehouse at the same time as yours? A. Yes.

Q. Did you ever have any talk with Cahill about them? A. Well, we had a talk about the price, two trucks unloaded at one price.

Q. What was said about that? A. It was perfectly all right with him.

Mr. Murray: May I ask your Honor direct him to speak louder?

The Court: I have directed him a good many
2856 times, but the only thing I can do is have the stenographer read the answer.

The Witness: That was in a day's wages, two trucks.

Q. How much did you pay him after that? A. Half of $9.42, if it was two trucks.

Q. Whose money was that?

Mr. Maguire: Objected to.
The Court: Overruled.
Mr. Maguire: Exception.

A. It would be part of mine and anybody else that came in besides me.

Q. Did you ever have any pickups to make on the same day when you made these deliveries at the warehouse? A. If it was possible, we did.

Q. Did you ever have any talk with Cahill about such pickups? A. Yes.

Q. Now, what was said about that? A. There was nothing doing where we had to pick up——

2858

Mr. Maguire: May I move that it be stricken out as not responsive?
The Court: Strike it out.

By the Court.

Q. The question was did you have a talk with Cahill about pickups? A. Yes.

Q. What was said in that talk by Cahill and by you? A. We would just go to pick up——

Q. What was said? You are telling us now what you did. We want to know what was said before you did anything, if you did do anything. A. When we had a pickup order, we went and picked up.

2859

Q. Well, did you talk to Cahill about it? A. I just told him we got a pickup order and we would pick it up.

Q. What did he say? A. "All right, we will go and pick it up."

By Mr. Marks.

Q. Did he always go with you? A. Not all the time.

Q. Do you remember one particular time when he didn't go with you? A. Yes.

Q. Where did you make that pi ..up?

Mr. Maguire: May we ask that the time be fixed?

The Court: Yes.

Q. Do you remember when it was? A. I do not.

Q. Where was that pickup?

Mr. Maguire: Objected to.

The Court: Allowed.

2861 A. There were several places. Hoboken, New Jersey, was one of them, and American Sugar Refining in Brooklyn was another one. Up in Sucrest Sugar. Any place the order would be.

Q. I am trying to recall to you one specific occasion, Mr. Bernot, when Cahill did not accompany you to the place where you made a pickup. Do you remember that? A. Well, one place would be—very important—would be the American at Kent Avenue.

Q. Kent Avenue? A. Kent Avenue.

Q. In Brooklyn? A. South Fourth Street.

Q. Is that Brooklyn? A. Yes, sir.

Q. What company was it? A. American Sugar Refining.

Q. Where did you come from when you went to the
2862 American Sugar Refining Company? A. The Long Island warehouse.

Q. And who unloaded you that day? A. Mike.

Q. Did you pay him any money that day? A. Yes.

Q. How much? A. Half of $9.42.

Q. What happened when you got to the American Sugar Refinery? A. I was stopped again.

Q. By whom? A. I wouldn't know the name.

Q. What did he say?

Mr. Maguire: Objected to.

The Court: Sustained.

A. That he was to unload——

Mr. Maguire: I move to strike it out.

The Court: Strike it out.

Mr. Marks: I should like to be heard at this time once again on this question.

The Court: Well, I am not going to hear you if you are going to talk about the fur case. I read it over Sunday and I am not going to admit this testimony without further foundation being laid. 2864

Mr. Marks: May I refer to the fur case in argument for a moment?

The Court: No.

Q. Did that man in Brooklyn say who he was? A. He told me he was with——

Mr. Murray: I object, if your Honor please.

The Court: Strike it out. Objection sustained. Did you ever see the man before?

The Witness: No, sir.

The Court: Have you ever seen him since?

The Witness: No.

The Court: You never saw him with Cahill?

The Witness: No, sir. 2865

Q. Did he show you anything? A. 807 book.

Mr. Maguire: I move that it be stricken out.

The Court: I will allow it.

Mr. Maguire: Exception.

Q. Did you have a talk with him there? A. Yes.

Q. What was said?

Mr. Maguire: Objected to.
The Court: I still sustain it.

A. He said——
Q. No, don't tell us. Did he do anything? A. Loaded my truck.

Mr. Maguire: Objected to as immaterial.
The Court: Sustained. Strike out the answer.

Q. Did you have a talk with Cahill later on that same
2867 day? A. Yes.
Q. Did you call him up? A. Yes, sir.
Q. What did you say?

Mr. Maguire: Objected to. No foundation.
The Court: Overruled.
Mr. Maguire: Exception.

A. He said he will be right down.
Q. What did you say to him?

By the Court.

Q. What did you tell him? A. I was in trouble down there.
2868 Q. Did you tell him anything more than that? A. Yes.
Q. What did you say? A. I told him that a fellow down here wanted to load my truck.
Q. Down here? Where? A. Down at the Sugar Refinery.
Q. How long after you were at the American Sugar Refinery at Kent Avenue was it before you telephoned to Cahill? A. Immediately.

Q. Where did you telephone to him? A. The warehouse.

Q. Long Island City? A. Long Island City warehouse.

By Mr. Marks.

Q. What else did you tell Cahill? A. I don't very well remember.

Q. Tell us the entire conversation with him now.

The Court: No.

By the Court.

Q. Have you told us all the conversation you had with Cahill at that time over the telephone? A. May I repeat it— 2870

Q. No. I say have you told us all the conversation that took place? A. No, sir.

Q. Well, tell us anything more that you haven't told us. A. I told him, "I am down at Kent Avenue, at the Sugar Refinery, and there is a man here to load my truck."

Q. Is that all? What did he say? A. He said, "Let him go ahead and load."

Q. What did you say? A. I said, "All right."

Q. Is that all he said? A. He said he will be down right away.

Q. Did the man load your truck? A. Yes.

Q. Did Cahill come down there? A. Yes, sir.

Q. Did Cahill get there before the truck was loaded? 2871
A. Just about completed the loading.

Q. Then did you have a conversation with Cahill? A. Yes, sir.

By Mr. Marks.

Q. What did you say? A. I hadn't anything to say, only he did the saying—all the saying.

Q. What did he say? A. He said, "I will give you the money and you can pay the man off."

Q. How much did he give you? A. $9.42 or 45. I don't exactly remember within a few cents.

Q. What did you do with the money? A. I gave it to the man that loaded me.

Q. Now, have you any papers with you? A. What kind?

Q. Those papers I saw before. A. (Witness hands papers to counsel.)

(Mr. Marks hands papers to the clerk.)

(Marked Government's Exhibits 24 and 25 for
2873 Identification.)

Q. I show you these two papers, Exhibits 24 and 25 for Identification, and ask you if you have ever seen those before? A. You mean seen these papers before?

Q. Yes. A. I seen it the day it was written.

Q. Whom did you see write on those papers? Examine them and tell us. A. Well, the signature on there is J. W. Murray, and he claimed to be J. W. Murray.

Q. You saw him write on them? A. Yes, sir.

Mr. Marks: I offer them in evidence (handing to defense counsel).

The Court: Show them to counsel.

2874 Mr. Maguire: With your Honor's permission, may I ask the District Attorney if he is offering both sides of the sheets?

Mr. Marks: I don't see, your Honor, how I can offer one side and not the other.

The Court: Oh, yes, you can.

Mr. Marks: The second side is immaterial. I have no interest in it.

The Court: The question is whether you are offering it or not.

Mr. Marks: What I offer in each case is what might be called the back of each piece of paper with the pencil writing on it.

Mr. Maguire: I object to it as not binding on these defendants.

The Court: Let me see it.

(Mr. Marks hands papers to Court.)

The Court: Well, ask the witness when he received these papers with relation to the day when he says they were signed by the persons whom he identified.

Q. Did you receive these papers—— 2876

The Court: No. When? Let him testify.

The Witness: They are dated.

The Court: You saw somebody sign them?

The Witness: Yes, sir.

The Court: Now, who was the person that signed?

The Witness: These papers, both of these papers are signed by J. W. Murray.

The Court: And you saw him sign them?

The Witness: Yes, sir.

The Court: And was it at that time that those papers were delivered to you, after he signed them?

The Witness: After he signed them, I got them immediately.

The Court: Yes? 2877

The Witness: Yes.

The Court: Objection overruled.

Mr. Maguire: I respectfully except.

The Court: We will settle the question now about whether a paper can be offered without offering the other side of it. The clerk will have that portion of the exhibit offered in evidence photostated.

The two documents will remain 24 and 25 for Identification. The photostats will be marked in evidence when delivered here 24 in evidence and 25 in evidence. So you can have a document which is marked for identification and also in evidence at the same time.

Mr. Marks: I am sure I speak for Mr. Boudin and myself in thanking you for that, your Honor.

The Court: Well, I am glad there is a time when you can speak for him and your side of the table.

(Government's Exhibits 24 and 25 for Identification received in evidence.)

2878

The Court: Now will you read to the jury so much of the paper as has been received in evidence? Of course, the paper can't be shown to the jury until photostated.

Mr. Marks: Each of these, ladies and gentlemen, I believe is identical, and read, "Received from Ripko and Bernot $9.42 for two," and some word I can't read, "loads." Signed, "J. W. Murray."

The Court: Is there a date on it?

Mr. Marks: Oh, yes, "trailer loads." There is no date on that side, your Honor. There is on the other side.

The Court (after looking at papers): Suppose you look again and see whether there isn't a date on it.

2880

Mr. Marks: March 23, 1938.

The Court: Now look at this one and see if there is a date on that.

Mr. Marks: May 16, 1938. The other exhibit that I haven't read to you is the same except for the date. May I have these marked?

(Marked Government's Exhibits 26 and 27 for Identification.)

By Mr. Marks.

Q. Now will you look at these two papers, Mr. Bernot, Exhibits 26 and 27 for Identification, and tell us when you first saw those? A. When I first seen these?

Q. Yes. A. The first name is supposed to be George——

Q. No. Tell us when you first saw the papers. A. Oh, the papers? Immediately after he unloaded.

Q. Do you remember the date? A. Third month, seventh day, 1938, one of them; and the other one is third month, ninth day, 1938.

Q. Do you remember who unloaded your truck on these days? A. Well, these two loads were unloaded by George. The last name I don't know. 2882

Q. George? Did you ever see that George before? A. Before he unloaded?

Q. Yes. A. Yes.

Q. Did you ever see him with Cahill? A. Yes.

Q. How many times? A. Oh, a few times.

Q. Now, when you saw George write on these two papers, Exhibits 26 and 27 for Identification, did you give him anything? A. $9.42.

Q. Is that what you gave him? A. Yes, sir.

Mr. Marks: I offer them in evidence as to the reverse side only.

Mr. Maguire: Objected to on the ground that it is not binding on the defendants.

The Court: May I see them? 2883

(Mr. Marks hands papers to Court.)

The Court: Objection overruled.

Mr. Maguire: Exception.

The Court: And they will be treated in the same way as the two previous exhibits.

(Government's Exhibits 26 and 27 for Identification received in evidence.)

Mr. Marks: Now, 26 for Identification, ladies and gentlemen, has these words——

The Court: No. 26 in evidence.

Mr. Marks: 26 in evidence. "Called him Al. 6-9444, paid $9.42, 3/7/38, unloading, W. Ripko and F. Bernot," abbreviation for Diamond T trailer, "at Richmond Radiator, Long Island City. G. Maggio." 27 in evidence: "Paid $9.42 to unloading and loading, 3/9/38. G. Maggio."

The Court: Let Mr. O'Grady have those to have them photostated.

Mr. Marks: Now may I have these three marked?

2885 (Marked Government's Exhibits 28, 29 and 30 for Identification.)

Q. Now I show you these papers, Exhibits 28, 29 and 30 for Identification, and ask you when you first saw each of those? A. Each one of those papers?

Q. Yes. A. Those were picked up March 29th. Naturally it would be unloaded after the 29th of March.

Q. Do you know how long after? A. Well, if there would be a holiday in between—it would be Saturday and Sunday—Monday.

Q. That is, a day or two later? A. If this is like picked up today, then maybe a day or two later.

Q. That is Exhibit 29 you are referring to? A. Yes.

2886 Q. Now, the next one——

The Court: One moment. He hasn't answered your question yet. Read the question.

(Question read as follows:)

"Q. Now I show you these three papers, Exhibits 28, 29 and 30 for Identification, and ask you when you first saw each of those?"

The Witness: This one here would be after March 29th.

The Court: What year?

The Witness: 1938.

The Court: What is the number of that for identification?

Mr. Marks: 29.

The Witness: 29.

The Court: What is the next one?

The Witness: 30 would be March 11, 1938, and April 5, 1938.

The Court: Exhibit 28 for Identification.

2888

By Mr. Marks.

Q. Who did you say wrote on each of those? A. The fellow that called himself Joe Kelly.

Q. Had you ever seen him before? A. A few times before.

Q. Had you ever seen him together with Cahill? A. Several times.

Q. Did you pay Joe Kelly on each of the three days when he gave you these papers? A. No. 28, $9.42.

Mr. Boudin: I take it this is taken subject to the same objection and exception?

The Court: Yes.

The Witness: No. 30, $9.42, and No. 29, half of $9.42.

2889

Q. Was that all your own money? A. Yes, sir.

Mr. Marks: I offer Exhibits 28, 29 and 30 as to the reverse sides only in evidence.

Mr. Maguire: Same objection.

The Court: Same ruling.

(Government's Exhibits 28, 29 and 30 for Identification received in evidence.)

Mr. Marks (to the jury): Exhibit 28 bears these words (reading Exhibit 28 to the jury). Exhibit 29 bears these words (reading Exhibit 29 to the jury). Exhibit 30 bears these words (reading Exhibit 30 to the jury). That is all, Mr. Bernot.

The Court: Cross-examination. The same disposition will be made with respect to those three exhibits as has been made with the other four.

Cross-examination by Mr. Murray.

2891

Q. Now, Mr. Bernot, do I understand you to say that you owned your own truck? A. Yes, sir.

Q. How long did you own that particular truck? A. The one I am operating now, ever since——

The Court: No, no; the one you were operating in 1938. Is that what you mean, Mr. Murray?

Mr. Murray: Yes, your Honor.

A. (Continued) Well, it is three years now; three years and two months exact.

Q. All right. But at least when these incidents occurred that you testified about, did you own the same trucks that you now own? A. Yes, sir.

2892

Q. Now, where did you operate out of? A. Eastern States Transportation, Uniontown, Pennsylvania.

Q. Now, do you know who the general manager of that concern was? A. Mrs. Spackman.

Q. Do you know whether Mr. Robert Spackman had anything to do with that concern? A. He was running the business.

Q. Now, did Spackman employ you? A. Yes, sir.

Q. The Richmond Radiator Company did not employ you, did it? A. The Eastern States Transportation, care of Spackman.

Q. But you had no direct contact with the Radiator Company, did you, so far as the employment or compensation was concerned? A. No, sir; no, sir.

The Court: A little louder, Mr. Bernot.

The Witness: No, sir.

Q. Did you know how many trucks the Eastern Lines actually owned? A. I did not.

Q. How long have you lived in Uniontown? A. Near 2894 Uniontown——

The Court: He does not live in Uniontown, according to the direct testimony.

Q. Well, how long have you been doing business out of Uniontown? A. 1936.

Q. Do you know whether or not the Eastern Lines employed trucks such as yourself to do hauling for the Richmond Radiator Company?

The Witness: May I have that repeated?

The Court: The stenographer will repeat it.

Q. (Read.) A. Yes. 2895

Q. Do you know the names of any other truckers that the Eastern concern hired to do trucking, particularly trucking for the Richmond Radiator Company?

Mr. Cahill: I object to that as immaterial and not within the scope of the direct.

Mr. Murray: I could state, your Honor, the purpose of my question.

The Court: I would like to know.

Mr. Murray: Well, Spackman, who testified here today, as I understood, said that he hired, I think, between——

The Court: All of them.

Mr. Murray: No. I think he said, Judge, he had three.

Mr. Marks: That was Beatty.

Mr. Murray: Oh, yes, he hired all of them.

The Court: That is right.

Mr. Murray: And I would like to find out, if your Honor please, whether or not—and my mind
2897 is not clear about Spackman's testimony—whether or not this witness knew whether Spackman was paying for those deliveries in New York, at least to Local 807, or whether or not the individual truckmen were paying, because it was my recollection that Spackman testified that he paid.

The Court: Well, I will sustain the objection.

Q. Now, when you paid Cahill or anyone else here in New York when you delivered a load for assisting in the unloading, when you went back to Spackman did Spackman repay you for what you paid? A. No, sir.

Q. Did he ever compensate you at any time? A. No, sir.

Q. Now, when did you begin to pay less than $9.42 for
2898 this unloading? A. Never did.

Q. Did you ever pay $4? A. Not off my hand. Never.

Q. Well, did you always pay $9.42? A. Outside of two trailer loads. If there was two trailer loads there would be half of $9.42.

Q. If there were two? A. Two unloading the same day.

Q. Now, did you ever talk to Spackman, or did Spackman ever tell you, that he had made an arrangement where

by you were to pay less than $9.42 for unloading in New York or Long Island? A. I did not know how he was running his business.

Q. Well, did you know that Spackman had no trucks of his own? A. Yes, sir.

Q. And did you know that other truckers, the same as you, were hired by Spackman to haul this merchandise? A. Yes, sir.

Q. Well, did you have any talk with Spackman at all, say after January of 1938, as to whether or not you were to pay a certain stipulated sum to any member of Local 807 for any services rendered in unloading your trucks? A. Yes, sir. 2900

Q. When did you have a talk with him? A. I don't remember.

Q. Well, do you remember whether or not it was— A. It was in the early part of 1938.

Q. Beg pardon? A. It was in the early part of 1938.

Q. Was it some time around January or February, 1938? A. I do not know.

Q. Now, did you have a contract with Spackman? A. For hauling. I was just hired.

Q. Did you have a written contract? A. Well, it is so far back, I don't remember if there is one. We had some kind of copies, but I don't know if it was a contract or what it was.

Q. Well, when did you quit, if you did, working for Spackman's concern? A. Well, I didn't quit altogether. I was maybe delayed a month or so, but it was not much more than a month. 2901

The Court: Well, we are going to quit here now. 10.30 tomorrow morning.

(Adjourned to April 24, 1940, at 10.30 A. M.)

New York, April 25, 1940,
10.30 A. M.

TRIAL RESUMED.

The Court: Gentlemen, it will be necessary for me to take a recess of at least fifteen minutes at 11.45, perhaps more, because a matter is being sent down to me from Rroom 506 in which I will have to conduct a hearing. I will try to make it brief and put it over to Saturday morning and finish it then.

Mr. Murray: May I proceed?

The Court: Yes, please.

2903 Mr. Murray: Now, if your Honor please, there are exhibits here numbered from 24 to 30. Those are the exhibits that your Honor directed be photostated yesterday so that the face of them would not appear.

The Court: That is correct.

Mr. Murray: If your Honor please, I now offer the entire exhibits, face and back.

The Court: Very well. Is there an objection?

Mr. Cahill: Counsel contended yesterday that the front was immaterial and we offered it, your Honor. We have no objection.

Mr. Murray: I did not, your Honor.

The Court: Just a moment. Let us have that straightened out. The observation with respect to the other side
2904 of these exhibits, when they were marked for identification and then offered in evidence yesterday, was made by Mr. Maguire. The offer in evidence now was made by Mr. Murray.

Mr. Cahill: That is true.

The Court: Who is representing other defendants. Now you say you have no objection?

Mr. Cahill: We have no objection.

The Court: Now let us find out if Mr. Maguire or Mr. Boudin have any objections.

Mr. Maguire: No objection.

Mr. Boudin: No objection.

The Court: All right. It will be received in evidence and marked as one exhibit.

(Marked Defendants' Exhibit I.)

FRANK BERNOT resumed the stand.

Cross-examination (continued) by Mr. Murray.

2906

Q. Now, Mr. Bernot, did you get receipts each time that you paid anyone for unloading your truck? A. No, just several.

Q. Beg pardon? A. I didn't get them all, but just several.

Q. Now, were there times when Cahill or Murray, alias McCaffrey, or anyone else unloaded your truck when you did not get a receipt? A. Yes.

Q. Would you be good enough to tell us how long you worked for Mr. Spackman's concern? By that I mean the last time that you made deliveries to the Richmond concern in Long Island in behalf of Mr. Spackman's concern. A. I worked for Eastern States Transportation ever since 1936, in February.

2907

Q. Well, did you work for them delivering to the Richmond Company in the spring of 1938? A. Well, we would go up there more often than anywhere else.

Q. No. I say, did you make deliveries to the Richmond Company for the Eastern Transportation Company in the spring of 1938? A. Yes.

Q. Now, are you able to tell us when you desisted making deliveries for the Eastern Transportation to the Richmond Company in Long Island? A. (No answer.)

Q. Is my question clear? A. Would you repeat that question?

(Question read.)

Mr. Cahill: If your Honor please, I think the previous question contained a word the witness did not understand, "desisted."

Mr. Murray: All right, I will withdraw it, if it is not clear to the witness, and reframe it.

Q. You mean that you do not quite understand what I mean? A. That is right.

2909 Q. Well, did you deliver to the Richmond concern in Long Island in April, 1938? A. Well, we delivered March, April, May, June; pretty near all the months——

Q. At least, did you deliver up to about June 1, 1938? A. Yes, even further.

Q. I am only concerned up to June 1st. Now, how many times a week, if you can tell us, from March, 1938, up to June, 1938, you made deliveries from the neighborhood of Uniontown, Pennsylvania, for Spackman's concern? A. It is too far back to remember. I can't tell you that.

Q. Have you got any idea whether or not it was once a week or more than once a week? A. We would average a trip once a week or three trips in two weeks.

Q. Now, that was for Spackman's concern that you made those deliveries, is that correct? A. Right.

2910 Q. Now, from the time that you say you met Cahill and the unloading was done by others than yourself, did you always pay Cahill or Murray, so-called, or someone else yourself personally for the unloading?

Mr. Cahill: I object to the form of the question, assuming a state of facts not proved in evidence, the contrary being shown.

The Court: Overruled.

Q. Do you understand the question? A. Repeat that question, please.

(Question read.)

Mr. Cahill: It is that subsidiary part, "and the unloading was done by others than yourself," which is assumed in the question, and the proof is to the contrary. It is to that form of question that I object.

The Court: Well, if the witness understands the question, he can answer it; if he doesn't understand it, he can say so.

Mr. Cahill: But, if your Honor please——

2912

The Court: I have already ruled.

Mr. Cahill: It is a legal objection that I have.

The Court: I understand that. I don't agree that it is a legal objection, but I agree that you have made an objection and I overruled it.

Mr. Cahill: In my sincere opinion it is, your Honor.

The Court: Well, you and I may have the right to differ.

Mr. Cahill: Yes, your Honor.

The Witness: Well, if any 807 unloaded and I was there alone, I paid $9.42; if there would be anybody else beside me, I would give half of $9.42.

The Court: You mean if there was any other truck besides your truck there?

2913

The Witness: Yes, sir, your Honor.

The Court: Then you paid half?

The Witness: Half of $9.42.

Q. When you speak of another truck or any other truck, you mean trucks of the Eastern Lines, B. & B. Transportation or Paul Glover? A. They would all be running the same material as we were.

Q. Well, now, what I am trying to ascertain is whether or not on each of those occasions in connection with the unloading up to June 1, 1938, you always paid the men that you say were connected with Local 807? A. I won't say exactly June now.

Q. No. Up to June.

The Court: Up to June.

Q. Before June 1st. A. Well, I am sure up to April.

Q. Well, I understood you to say that you personally paid for each delivery to some member of Local 807 up to June 1st, is that correct? A. Well, we still do pay.

2915

Q. No.

The Court: Strike it out.

Mr. Boudin: I move to strike it out.

Q. I am just talking about up to June 1st. A. I don't remember that.

Q. Well, did you personally pay those unloaders during the entire month of April of 1938? A. Up to April I can say.

Q. Did you pay in April? A. I do not know.

Q. Did you pay in May? A. I do not know.

Q. Did you pay in June of 1938, or up to June of 1938?

2916

The Court: Well, you have asked him about May and that is up to June.

Mr. Murray: That is right, Judge. I guess I am a little confused.

Q. Well, now, did Murray, so-called, Cahill or anyone else that you met that represented themselves as members of Local 807 have anything to do with unloading your truck in April or May of 1938? A. Well, 1938, in April or May, is the time we quit paying $9.42, when there was

an arrangement made by Eastern States Transportation that we did not pay and that was drawn up for a monthly statement.

Q. That is what I am trying to find out. A. I didn't get your point.

Q. Did you not testify on cross-examination yesterday that on each occasion when members of Local 807 had anything to do with unloading your truck, that you paid $9.42?

The Court: Do you mean on cross-examination?

Mr. Murray: Yes, your Honor.

The Court: Do you understand what counsel means by cross-examination, Mr. Witness? 2918

The Witness: Yes, your Honor.

The Court: Do you understand what he means by cross-examination?

The Witness: I don't understand the question quite clearly.

Q. Well, I will try to repeat it. Do you remember after Mr. Marks, the Assistant District Attorney, quit asking you questions yesterday, that then I arose and asked you some questions? Do you remember that? A. Yes, sir.

Q. Do you understand that the questions that I ask you as one of the defense counsel are called cross-examination? Now I ask you again, when I questioned you yesterday afternoon did you state that you always paid $9.42 2919 at the unloading of your trucks? A. Up to where the contract was made by Eastern States Transportation.

Q. Did you say anything about the contract yesterday afternoon when I asked you those questions? A. No, sir.

Q. And you knew what I meant then, didn't you? A. No, sir.

Q. Have you talked with Spackman since you left the witness stand yesterday afternoon? A. No, sir.

Q. Well, do you remember that I specifically asked you yesterday afternoon whether a time didn't come when you only paid $4 and something for unloading a truck? Do you remember that? A. Yes, sir, but I understood that you were talking about April.

Q. Now I am reading from page 1066 of the record. Were you asked this question yesterday and did you make this answer: "Q. Now, when did you begin to pay less than $9.42 for this unloading? A. Never did"? A. Not cash off my own hands. I never did. Every time I had cash off my own hands it was $9.42.

Q. Were you asked that question yesterday that I have
2921 just read and did you make the answer that I read? A. Yes, I remember.

Q. Then were you asked this question and did you make this answer: "Did you ever pay $4? A. Not off my hands, never"? A. Correct.

Q. Now, skipping a couple of lines——

Mr. Cahill: If your Honor please, I ask that counsel be directed to ask the ensuing question.

The Court: I won't direct him. You may ask him if he will do it, and if he doesn't do it you may ask.

Mr. Cahill: As I understood, your Honor, the rule in this circuit was that counsel couldn't pick questions at random and examine on them.

2922 The Court: Well, I have ruled. You may call the attention of the witness and the jury to any questions that counsel omits, if counsel does not choose to accord with your suggestion.

Mr. Murray: I shall comply, if your Honor please, with Mr. Cahill's suggestion. I will read it.

The Court: You may do so if you like.

Q. Were you asked this question and did you make this answer: "Q. Well, did you always pay $9.42? A. Outside

of two trailer loads. If there was two trailer loads, there would be half of $9.42"? Did you make that answer? A. Correct.

Q. And were you asked this question and did you make this answer: "Q. If there were two? A. Two unloading the same day"? A. Correct.

Q. Now, were you asked this question and did you make this answer: "Q. Now, did you ever talk to Spackman or did Spackman ever tell you that he had made an arrangement whereby you were to pay less than $9.42 for unloading in New York or Long Island? A. I did not know how he was running his business"? A. Correct.

Q. Now, you did know how he was running his business 2924
in respect to the payments when more than one truck was unloaded, didn't you, at that time? A. Not till the end of the month, till we found out on our statements.

Q. Well, didn't you ever find out that Spackman had made arrangements where there would be an occasion when less than $9.42 would be paid for the unloading? A. At the end of the month, when the statements came, that is the only time I knew it.

Q. After having unloaded in New York and paid any money to any members of this union, did Spackman compensate you for what you had paid? A. Would you explain that more clearly?

Mr. Murray: All right, perhaps it is too com- 2925
plicated. He does not know what "compensate" means.

The Court: He understands the word "compensate," no doubt, but not in the sense that you used it.

By the Court.

Q. Did you ever get back from Spackman the $9.42 that you paid to 807 men? A. Never did.

By Mr. Murray.

Q. Well, let me ask you, did Spackman tell you at any time before June 1st of 1938 that there would be a situation in which you would have to pay less than $9.42 for unloading? A. He never told us anything like that. The only time we knew it was at the end of the month, showing on the statement.

Q. Did you ever talk to him about it? A. Well, I often told him that we had had to pay an amount over here, and that is all the good it did.

Q. Now, you say you only knew what was to be paid
2927 concerning this unloading proposition when you got a statement at the end of the month; is that correct? A. That is right.

Q. From whom did you get a statement? A. The Eastern States Transportation Company.

Q. Now, what did the statement show with respect to what was paid to members of Local 807 for unloading? A. Well, there would be some months maybe there would be $27 altogether, and some would be less.

Q. Well, did Spackman deduct from the monthly statements the amount of money that you personally had paid for the unloading? A. That was deducted from our payroll, monthly statement.

Q. That is, Spackman— A. Deducted from our monthly statement.

2928 Q. Well, when you personally paid members of Local 807 for unloading did anything appear on Spackman's statement about it at the end of each month? A. Showing what the labor charges were in New York City, that is all.

Q. But you had paid the labor charges, hadn't you? A. That was deducted from our monthly statements, sir.

Q. You mean if you paid $9.42, would that figure appear on the monthly statements? A. No, sir, that would not appear.

Q. Well, when would what was paid for unloading appear on the monthly statements? A. I don't remember when.

Q. Well, do you know whether or not Spackman charged to you $9.42 for unloading when as a matter of fact members of the union only charged him $4 and something? A. I don't remember when, but there were times when we were paying $5.50 instead of $4 something. I was paying $5.50 because I always had a trailer.

Q. All right. Was there any time that you know of that Spackman charged you $9.42 on the statement, monthly statement, where only $5.50 had been paid? A. I don't remember. 2930

Q. Well, do you know whether or not that situation ever existed? A. No.

Q. You don't know, is that your answer?

Mr. Cahill: The answer was "No," if your Honor please.

A. If he told me, if I ever knew——

Q. Did you ever know of any instance where Spackman on your monthly statement charged $9.42 for unloading whereas the union only had been paid, say, $5.50 for unloading? A. $9.42 was never shown on the statement.

Q. I was asking you when court closed yesterday as to whether or not you had a written contract with the Eastern Lines represented by Spackman; do you remember? A. It is too far back to remember. 2931

Q. What? A. It is too far back to remember. Ever since 1936 I had several copies; I don't know exactly what they are.

Q. Did you have a written contract with the Eastern Lines in 1938? A. I don't remember.

Q. Well, now, you only had one truck, didn't you? A. Yes, sir; but I started working for Eastern States Transportation in 1936.

Q. I know, but you only operated one truck, didn't you? A. I operated one in 1936 and 1937. From 1937, I operated one from 1937 till now.

Q. What I mean is, I don't mean it was the same truck, but I mean at any one time you only had one truck; is that right? A. Yes, sir.

Q. Now won't you please try to remember whether or not you signed a written contract with the Eastern Lines in 1938 covering your trucking for them? A. If it was any signing to do, it was done in 1936. There was nothing done in 1937, 1938 or 1939.

Q. Well, did you make a yearly contract with the
2933 Eastern Lines? A. We don't make yearly contracts. If it is made, it is made till the time you quit, completely done.

Q. Well, in 1937 did you truck for anyone except the Eastern Lines? A. I don't remember working for anybody else besides Eastern Freight Lines, Eastern States Transportation, 1937.

Q. Well, did you work for anyone else besides Eastern Lines in 1938? A. Not in 1938 neither.

Q. Well, did you have any written contract with Eastern Lines as represented by Spackman as to what you were to be paid for your services, say, on the haulage of freight from Uniontown, Pennsylvania, to the Richmond place in Long Island? A. I do not know.

2934 Q. Well, did you make some arrangement with the Eastern Lines whereby you would be paid for your services? A. (No answer.)

Q. Can you answer that question?

By the Court.

Q. Do you understand the question? A. Not very well, your Honor.

Q. Did you get paid by Spackman for the trucking that you did in New York? A. Yes, sir.

Q. Did you have a verbal understanding with him as to how much you were to be paid, or a written understanding? A. It was only the rates that we went by.

Q. Well, were the rates, rates that you and he discussed verbally, or were they put on paper? A. They were the rates of tariff.

Q. Well, were they written down? A. Well, he had them written down in his own office.

Q. But did he ever give you any paper that contained the rates at which you were to be paid? A. No, sir.

Q. Was that just a word-of-mouth understanding that 2936
you had with him? A. I do not know how that went.

Q. Well, when you first started to haul for Spackman in 1936, did you make any written agreement with him then? A. We had some kind of copies, but I do not know what they were. It is too far back to remember.

Q. Well, did you operate under the same arrangement from 1936? A. Till now, yes.

Q. Up until June the 1st, 1938? A. Yes, sir.

By Mr. Murray.

Q. Well, let me ask you, did Spackman in behalf of his company lease your truck? A. (No answer.)

The Court: Do you understand what that means? 2937
The Witness: Well, we had a written lease.

Q. Now, when did you have a lease? What year? A. I don't remember. If it was, it was somewhere in 1936.

Q. Well, did you just remember now that you had a written lease? A. There was a written lease that we were to haul Eastern Transportation Company material only.

Q. Well, who was the lease between—you and the Eastern? A. Eastern States Transportation, yes.

Q. And you were only to haul for them? A. Yes.

Q. Now have you got that lease, or a copy of the lease? A. If I do, I probably have it at home.

Q. That is, you haven't got it with you now? A. No.

Q. Do you know whether or not the lease is still in existence? A. It may be destroyed by now.

Q. It may be destroyed? A. Yes.

Q. Well, are you still doing work for the Eastern Lines? A. Up till today—up till last week I was.

Q. All right. And does Spackman still represent the
2939 Eastern Lines? A. Eastern Freight Lines?

Q. Yes. A. Yes.

Q. And was that the same concern that you were working for when you trucked to Long Island in 1938? A. That was the one.

Q. And is that lease or that contract that you speak of the only writing that you had with the Eastern Lines? A. It might have been more than that. I don't know.

Q. Well, you definitely know there was one in 1936, don't you? A. Yes, a lease.

Q. And your recollection is that there was only ever one written lease, isn't that right? A. I don't know. It might have been more than one.

Q. You mean after 1936? A. In 1936.

Q. All right. How long did the lease that was signed
2940 in 1936 run for? That is, how many years was it to stay in existence? A. As long as you operate for Eastern States.

Q. So that there was no necessity for the signing of more than one lease, was there? A. Not that I know of. I never signed any more after.

Q. All right. Now, did that lease provide for the manner in which you were to be paid for your services? A. It

didn't have nothing showing on there. It just said hauling material for Eastern Transportation only.

Q. Well, then, is the situation that what you were to be paid for your services was an oral agreement between Spackman and yourself? A. That was the rates. They had rates put on a board like that and that is the only way you got it.

Q. All right. Will you be good enough to look at this paper, Exhibit I. Will you look down here at the bottom of this Exhibit I. You see there, do you not, "Gross weight, 21,307" and some fraction; "rate, 50 cents; amount, $106.89"? Do you see that? A. Yes, sir.

Q. Now, what does that figure $106.89 mean on this 2942
paper? A. That means that Richmond Radiator goods—is all they paid to deliver that load to wherever it is going.

Q. Now, does $106.89 mean that the Eastern Lines charged the Richmond Company that amount of money for the delivery from Uniontown to their warehouse in Long Island?

Mr. Cahill: If your Honor please, I object to that as being immaterial; irrelevant; we are not trying the economics of the schedule of freight rates here.

The Court: Overruled.

Q. Do you remember the question or do you desire to 2943
have it read again? A. (No answer.)

Q. Mr. Witness, I will repeat. Do you remember the question or do you wish to have it read? A. I wish to have it read.

The Court: The stenographer will repeat it.

(Question read.)

Q. Now, under your agreement with the Eastern as represented by Spackman, how much were you to get out of this $106.89? A. I think it is unnecessary to go into that.

Q. Now, why do you think it is unnecessary to go into that? Is it because you have anything to conceal?

Mr. Cahill: I object to the statement and I ask that there be an admonition that there be no chiding of the witness here by counsel.

The Court: I sustain the objection. Counsel will address himself to the Court. If he wants an answer to the question, his proper course is to move
2945 to strike out the answer if he does not think it is responsive and ask the Court to direct the witness to answer the question.

Mr. Murray: Your Honor, I move to strike out the observation of the witness and I ask your Honor to direct him to answer the question.

The Court: Strike out the answer. Repeat the question.

(Question read.)

Mr. Cahill: And I press my objection that that is immaterial, irrelevant to the issue before us under this indictment.

The Court: Overruled. Do you understand the question?

2946 The Witness: Well, this $106 was the load of each month, and the commission, insurance for cargo, property damage, public liability, compensation and social security—that was all deducted from that.

Q. Well, could you contemplate this $106.89 and tell us what you got out of that sum for your labor after all these items which you have just stated were deducted?

The Court: I will ask you to reframe that question. I don't know what you mean by "contemplated."

Mr. Murray: All right.

Q. Now, were you charged a certain per cent. by Spackman for compensation, social security, insurance and other things? A. Yes.

Q. What per cent. were you charted for that? A. For commission, 15 per cent., less social security, compensation, and each month for insurance would amount to $50 to $60 per month.

2948

(Last answer read.)

The Court: When you say "compensation," do you mean compensation insurance?

The Witness: Yes, compensation for me.

The Court: Compensation for you? Compensation insurance for you?

The Witness: Insurance for me, yes.

The Court: You don't mean by compensation pay for your services?

The Witness: No.

Q. Now, do you know Mr. Beatty? A. Mr.—beg your pardon?

Q. Mr. Beatty. A. Yes.

Q. While you were working for Mr. Spackman and Eastern Lines did Mr. Beatty or Mr. Batty also work in that concern? A. He had a company of his own that I know of. 2949

Q. Now, did I understand you to say that at the end of the month there would be approximately $50 deducted for the items you have mentioned, plus 15 per cent. commission that the Eastern Lines would get? A. That is right.

Q. Well, now, are you able to tell us in the month of March, 1938, how much money or compensation you got from the Eastern Lines and what you were charged for commission and the other items here that you have mentioned?

Mr. Cahill: I renew my objection.

The Court: I sustain that objection.

Q. Was the Eastern Lines what was known as a broker, if you know? A. Yes.

Q. Did that mean that they owned no trucks or equipment of their own at all? A. That is right.

2951 Q. But that they went out and hired equipment from you and others? A. That is right.

Q. Now, this Exhibit I, dated March 21, 1938, where this amount $106.89 appears, could you tell us how long it took you to make the delivery from Uniontown, Pennsylvania, to New York and return to Uniontown?

Mr. Cahill: Objected to as not within the scope of the direct.

The Court: I will allow it.

A. Sometimes it took a week to make the round trip. Sometimes——

Q. When you took a week to make a round trip, you didn't take a week for this one item that is represented 2952 here for $106.89?

The Court: Just a moment. Who made that whistling noise? If I find anybody doing that in this court he will be brought up here and held accountable. You are not sitting in the gallery of a moving picture theatre at this time. Proceed.

(Last question read.)

Q. Did you? A. Do you mean that that is what I naturally got for a whole week?

The Court: No.

Mr. Murray: Perhaps I can explain it.

The Court: Proceed.

Q. This item of $106.89 has to do with a delivery on March 21, 1938, from the Richmond Radiator Company in Uniontown, Pennsylvania, to the Richmond Radiator Company at 27th Street, Long Island City, and your load consisted of 135 crates——

The Court: What you want to find out is how long it took him to make that particular delivery? Is that what you want to know? 2954

Mr. Murray: Yes. And apparently, I assume, there was some confusion in his mind as to what I meant. So I wanted to present the whole picture to him.

Q. There were 135 crates and 51 crates of sinks. Now, was that the only load on March 21st that you picked up at Uniontown, Pennsylvania, or did you have on your truck other merchandise to be delivered elsewhere in New York City? A. Just what is on the bill.

Q. Now, how long did the trip from Uniontown to New York take to make as you drove your truck? A. Well, if I drove it myself, it would take me three or maybe two days to get in. 2955

Q. Well, how many miles was it from Uniontown to the Richmond Radiator Company in Long Island City? A. Oh, about 380.

Q. Do you know how many hours would be consumed in making that trip? A. Well, driving alone it would be about sixteen or fifteen hours, driving hours.

Q. Well, did you drive on this occasion? A. Well——

Q. Do you want to look at this? Maybe— A. It is too far back to remember.

Q. Will you look at this Exhibit I and see if it helps you (handing exhibit to witness)? A. (After looking at exhibit) It is too far back to remember about this.

Q. Well, by looking at this Exhibit I are you able to tell us whether or not that was the only trip you made that week? A. I do not know.

Q. Now, on that occasion when you got into New York did you pick up other merchandise to cart back to Pennsylvania? A. If there was anything to pick up, we did.

2957 Q. If there was anything to pick up, where would you pick it up? At the Richmond Radiator Company? A. Wherever—no.

Q. Was there any other place besides the Richmond Radiator Company that you made pickups? A. In many places.

Q. Will you tell us some of them? A. American Sugar, Sucrest, Hoboken, Francis H. Leggett.

Q. All right, that is enough. Now, if you made pickups, would you be paid at the same rate for carrying that merchandise back to Uniontown as you were paid for trucking merchandise from Uniontown to New York? A. No, sir.

The Court: How is that material unless you show that that was done on behalf of the Eastern Transportation Company?

2958

Mr. Murray: Well, I understood, your Honor, that that was the situation.

The Court: Well, I don't know.

Mr. Murray: All right. I will reframe the question.

Q. When you trucked for the Eastern Lines to the Richmond Company in Long Island, and on the occasions when

you make pickups to return to Uniontown, did you make those pickups for the Eastern Lines? A. We had bills, orders to pick up before we got in.

The Court: Well, did you pick it up on your own account or did you pick it up for the account of the Eastern Transportation Company?

The Witness: For Eastern.

Q. And were you paid the same rate on your pickups for return to Pennsylvania as you were paid for carting from Pennsylvania to New York? A. No, sir.

Q. Were there different rates? A. Yes, sir. 2960

The Court: Would the rate depend upon the commodity?

The Witness: Yes, sir.

Q. Well, did you ever take stove parts or sinks back from New York to Pennsylvania?

The Court: You wouldn't suggest that about the American Sugar Company, would you?

Mr. Murray: No. I am talking about Richmond Radiator Company.

A. Well, defective parts, enamelware, would be rated for 35 cents——

Q. No. What I am trying to find out is when you trucked to the Richmond Company from Pennsylvania did you ever pick up anything in the line of hardware from the Richmond Company to take back to Pennsylvania? 2961

The Court: He said defective parts returned to the factory. Right?

The Witness: Yes.

Q. And were you paid for trucking those back to Uniontown? A. Yes, sir.

Q. Were you paid at the same rate that you were paid for trucking merchandise from Uniontown to New York? A. No, sir.

Q. Were they lower or higher rates? A. Lower.

Q. Well, now, if you picked up a full load from American Sugar Refining to take back to Pennsylvania, were you paid at the same rate that you were paid for taking your merchandise from Pennsylvania to New York?

Mr. Cahill: I renew my objection as immaterial.

2963 The Court: Sustained.

Mr. Murray: Exception.

Q. Now, did you always drive your own truck?

Mr. Cahill: I press the objection, that that has been asked at least three times.

The Court: I will allow him to answer it again.

A. My brother and I would be the only ones that drove it.

Q. And did you both come at the same time on your truck or did one of you come alone? A. No, sir.

The Court: Well, what do you mean by "No, sir"? There were two questions. That is not your

2964 fault. Did you and your brother come together on the truck?

The Witness: Halfway, and at different parts of the year.

Mr. Murray: Judge, unfortunately I didn't hear the answer.

(Answer read.)

Q. Well, on this load that appears here, an item of some $106, did you drive yourself? A. I don't remember.

Mr. Cahill: I object to it as asked and answered.

The Court: Overruled. He doesn't remember.

Q. Well, now you note, don't you, in this Exhibit I—Exhibit 25——

The Court: Well, it is Exhibit I in evidence, 25 for Identification.

Mr. Murray: I find that the 25 is the Government's exhibit and I is the defendants' exhibit, on the reverse side. Is that the way it was marked?

The Court: Are you now referring to the paper or the photostat? 2966

Mr. Murray: The paper. The photostat has been removed from the face——

The Court: The paper you have in your hand is the original of 25 in evidence and is 25 for Identification, and the several papers from 24 to 30 collectively are your Exhibit I in evidence.

Mr. Murray: But I see that identification has been scratched off.

The Court: Well, it shouldn't be at all.

(Court confers with clerk.)

The Court: On the reverse side of Exhibit 25 for Identification, being the original of 25, the photostat now in evidence—I thought I made it clear 2967 yesterday that we had an exhibit marked for identification which was also in evidence, but that the photostat took the exhibit number and the paper photostated retained the identification number, so that there won't be any confusion in referring to two papers that are alike, except that one is written originally by somebody in lead pencil and the other is a photostat of it.

Mr. Murray: Your Honor, I assumed that my offering of these exhibits obviated the necessity of the photostat being put in evidence.

The Court: No. It wouldn't obviate the confusion, because anyone who reads this record of yesterday will read it with respect to the exhibit numbers as they were given at the time the photostats were marked, and if you erase all that then there would have to be some explanatory statement on the record; otherwise a person attempting to read this record afterwards would find himself up a blind alley of confusion.

2969 Q. Well, at any rate, Mr. Witness, will you look at Exhibit 25 for Identification, this receipt that you say was signed by one Murray?

The Court: Being the original of 25 in evidence.

Mr. Murray: Yes, your Honor.

Q. On March 23, 1938. You see that, don't you? A. Yes.

Q. Do you know what time of the day this receipt was given to you? A. March 23rd.

Q. What time of the day? A. I do not know.

Q. Well, now, will you look at the reverse side, Exhibit I, and note that it bears the date of March 21, 1938? Do you see that? A. Yes, sir.

2970 Q. Well, did you get this load to start for New York with on March 21, 1938, or did you get it the next day? A. I wouldn't swear to that. Maybe the load was picked up a day ahead. I couldn't keep track of it.

Q. So although the bill shows a date of March 21st— A. The bill shows March 21st.

The Court: That is on the reverse side from the receipt?

Mr. Murray: Yes, your Honor, called Exhibit I.

Q. Well, looking at this date, does it refresh your recollection so that you can say whether or not you took that load on March 21st or whether or not you took it on March 22nd? A. I do not know.

Mr. Cahill: I object. It is quite patent that——

The Court: Overruled. The objection comes after the answer was made.

Q. Well, at any rate, were you able to tell us whether this paper, Exhibit I, which is the face of Exhibit 25 for Identification—are you able to tell when this paper was handed to you before you left Pennsylvania to deliver your load? A. The paper was handed to me before I went out, 2972 but the date I do not remember.

Q. Do you mean it was handed to you on the same day that you left? A. That I left, yes.

Q. Not the day before? A. Impossible.

Q. Now, the receipt on the reverse side shows it was given on March 23rd, doesn't it? A. If the date is correct. It is possible.

Q. Well, did you get this receipt, Exhibit 25 for Identification, on March 23rd? A. It might have been the 24th for all I know. It has the 23rd of March on there.

Q. Well, when you got it, did you look at it to see whether or not the date that was marked on it was the correct date? A. No.

Q. And if you got your load on March 21st in Uniontown and delivered it to New York on the 23rd it took 2973 you two days to make the delivery, didn't it? A. (After hesitating) I won't say exactly. Maybe it took more than two days. I don't know. It is too far back to remember.

Q. Well, you see the dates on these papers, don't you? A. It is possible for the dates to be wrong too, sir.

Q. Well, was it possible for the date of March 23rd in your original bill to be wrong?

Mr. Cahill: I object to it as argumentative.

The Court: I sustain the objection. I have a letter on my desk upstairs that I received this morning. It is dated April 26th. People do those things.

Mr. Murray: Well, I am trying to establish, your Honor, that it didn't take this witness any week to come to New York and return. Of course, I am concluded by the exhibit, by the date on it.

The Court: Well, it is conceded, is it not, that he did not write the date on the reverse side here, the part marked Exhibit 25?

Mr. Murray: It is conceded, your Honor.

2975 The Court: Whatever date was put down there, he took the paper with that date, did he not?

Mr. Murray: His testimony, if I remember, your Honor, was that he watched or observed the man writing it.

The Court: Well, suppose he did; did you ever write down a date and find out that it was the next day? Did you ever write a check out and date it on Sunday and then find out you had to change the date after you looked at a newspaper heading or something?

Mr. Murray: I usually date my——

The Court: Well, after all, the jury are people of common sense and everyday business experience. We don't want to take up time here argumenta-

2976 tively. The facts are in the record. One side of the paper bears the date the 21st of March and the other side bears the date the 23rd of March. He had to get the paper to start out from Uniontown, and he got a receipt after he arrived over in Long Island City, and the jury can make their deductions from that.

Q. Will you look at Exhibit 28 for Identification, the reverse side of which is Exhibit I——

The Court: Part of Exhibit I.

Q. (Continued) You testified yesterday, did you not, that on the payment of $9.42 that you were given a receipt signed by Joe Kelly? A. Yes.

Q. And that is dated April 5, 1938, isn't it? A. It is dated, but if it was I don't know——

The Court: No, no. It is dated April 5th. The record shows that.

Mr. Murray: Yes.

The Court: Do you want him to say that it is some other date?

Mr. Murray: No, your Honor. I want him to say 2978
what it is.

The Court: Well, isn't it there? Can he say anything different from what is on the paper? Can he without attempting to contradict the paper? If it is April 5th it is April 5th on the paper; it may have been some other date when it was signed or not.

Q. Will you look on the reverse side of Exhibit I in evidence and see this amount $104.10? A. Yes.

Q. By looking at this paper are you able to tell us whether or not on April 4th you set out from Uniontown for New York with your truck? A. It is not possible for me to say that I actually did leave the date that shows on 2979
the bill.

Q. Well, does April 4, 1938, help you to refresh your recollection as to whether or not you did leave Uniontown on the date that appears on this Exhibit I? A. I do not know.

Mr. Murray: That is all.

The Court: Any further cross-examination? Any redirect examination?

Redirect examination by Mr. Marks.

Q. Mr. Bernot, do you remember that just a few moments ago that Mr. Murray, this gentleman who just asked you some questions, asked you about money that you paid to Murray so-called, or Cahill or anyone else representing himself as a member of 807? Do you remember that? A. Just state that again.

Q. Do you remember just a few moments ago you were asked some questions about payments that you made? A. That is right.

Q. To this man who called himself Murray, or Mike Cahill? A. Or anybody else?

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Q. Or anybody else representing himself as a member of Local 807? A. Some of them said they were and some of them showed me that they were.

Q. Now, did you pay any money for unloading in New York City before the period that you first met Cahill and this man Murray?

Mr. Boudin: Objected to as immaterial.

The Court: Overruled.

Mr. Boudin: Exception.

A. No, sir.

Q. Do you remember when you first met Cahill? About when? A. During the summer months, as near as I can remember.

2982

Q. Of what year? A. 1937.

The Court: Didn't we go into that on direct examination?

Mr. Marks: I think, if your Honor please, the witness is confused for the moment. I am trying to place the time.

The Court: Go on until I see what you are trying to do. There would not have been any direct

examination at all if you had not fixed some time when he met Cahill.

Q. Do you remember the first time when you paid any money in New York City for unloading?

Mr. Boudin: If your Honor please, I object to that on the ground that that has been gone into fully.

The Court: Overruled.

Mr. Boudin: Exception.

A. I think the first time I paid was up at the warehouse. 2984

Q. About when? A. I do not know.

Q. Well, do you remember the year? A. During the summer months.

Q. Of what year? A. Of 1937.

Q. Now, was that before you met Cahill? A. I do not know.

Q. Was Cahill there that time?

Mr. Boudin: I object to that, if your Honor please.

The Court: I will sustain the objection.

Mr. Marks: If your Honor please, on direct examination I attempted to bring out from this witness the fact that he had met certain persons and had certain transactions with them in the summer of 1937. Objections to the questions at that time were sustained, and I was permitted to go no further. He then testified that some time later—my recollection is around the early months of 1938—he met Cahill and this man Murray and certain others. Now, on cross-examination, your Honor, Mr. James Murray asked him whether he had made any pay- 2985

ments to Cahill or Murray or anyone else representing himself as a member of Local 807.

The Court: I heard that.

Mr. Marks: I submit, your Honor, that that opens the door to my asking him once again on redirect about these early transactions.

The Court: The door is not open now. I sustain the objection to that question. Now you can put the next question.

Q. At the first time that you made any payment at the Richmond Radiator Company, do you remember who was there?

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Mr. Boudin: I object to that, if your Honor please.

The Court: I will allow him to state that.

Mr. Boudin: Exception.

A. I don't remember.

Q. How many men were there?

The Court: I will exclude that myself because he said he does not remember who was there, and it would not make any difference if there were a regiment there if he does not remember who they are.

Mr. Marks: But, your Honor, if they represented themselves of Local 807——

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The Court: Now, Mr. Marks——

Mr. Marks: Yes, sir?

The Court: I have great respect for your ability.

Mr. Marks: Thank you, your Honor.

The Court: But please understand that I have had experience myself in the trial of cases for thirty-eight years, and I think I know something about it. When I sustain the objection I do so because

I think it is my duty in the administration of the affairs of this Court to do it, and you go on with your examination.

Mr. Marks: I might observe, your Honor, that when I ask questions I ask them only because I believe it is my duty to do so.

The Court: Well, I rule on them with a little more experience.

Mr. Marks: No doubt, your Honor.

The Court: All right, now proceed. Let us get along, because we are not getting on very fast.

By Mr. Marks. 2990

Q. Did the men whom you talked to on that first occasion show you anything?

Mr. Boudin: I object to that.

A. They only——

Q. No, no, don't answer.

The Court: You need not answer.

Q. Did they say who they were?

Mr. Boudin: I object to that.

The Court: Sustained. Recess. I will now take up The Community Power & Light Company case. 2991
The jury may retire.

(Short recess.)

(At this point a discussion was had in chambers between Court and Counsel off the record.)

(The jury returned to the courtroom.)

(The clerk called the roll of the defendants.)

FRANK BERNOT resumed the stand.

The Court: Proceed.

Mr. Marks: No further redirect, your Honor.

Mr. Murray: No further cross.

The Court: Next witness.

CHARLES R. PRITTS, residing at Stahlstown, Pennsylvania, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

2993

Q. Mr. Pritts, how were you employed in the beginning of 1937? A. By Eastern States Transportation, contract.

Q. What? A. Contract by Eastern States Transportation Company.

Q. What was your occupation under that contract? A. Hauling merchandise.

Q. Between what points? A. Between Pittsburgh and New York, Philadelphia, Baltimore.

Q. By motor truck? A. By motor truck, yes, sir.

Q. Did you own the motor trucks in which you hauled? A. I did.

Q. Was that an exclusive contract to haul only for Eastern? A. That is right.

2994

The Court: Where is Stahlstown?

The Witness: In Pennsylvania.

The Court: Near what place?

The Witness: Well, it is near Uniontown, near—

The Court: That is enough. We have had Uniontown here.

Q. Did you haul merchandise into New York City? A. I did.

Q. Did you haul such merchandise into New York at the beginning of 1937? A. I did.

Q. Did you haul particular commodities? A. Particular commodities?

Q. I withdraw the question. Was the merchandise you hauled usually of one or two commodities, or was it general merchandise? A. Usually a whole load of the same kind of stock.

Q. Did you haul one kind of merchandise or different kinds? A. Yes, we usually hauled glass and enamelware—

Q. To New York City? A. —more than anything else.

Q. Did you unload your merchandise yourself at that time, the beginning of 1937? A. Well, we unloaded everything up to 100 pounds and over that the consignee unloaded. 2996

Q. By "we" whom do you mean? Do you mean yourself, or did you have a helper? A. Me and my driver. Sometimes I had the driver. Sometimes I came in myself.

Q. Do you recall any occasion in 1937 in which you did not unload your own merchandise? A. I do.

Q. Do you recall what merchandise you were hauling at that time? A. Glass.

Q. Where were you delivering that merchandise? A. New York.

Q. Do you recall the place in New York? A. Marks Bros.

Q. Where is that? A. I couldn't tell you the number of the place. It is up in the Bronx. 2997

Q. Do you remember the street? A. No, I don't.

Q. Will you place the time in 1937 when you hauled that load of glass? A. It was in the spring. Some time in the spring of 1937.

Q. What time of the day did you arrive with that load at Marks Bros.? A. 2 o'clock in the morning.

Q. Then what did you do? A. I went to bed.

Q. What time did you get up? A. 7.30.

Q. Then where did you go? A. I just went across the street to the diner. There is a diner right across the street from where I parked.

Q. Did you unload that load of merchandise yourself? A. I did not.

Q. Did anyone speak to you about unloading that merchandise?

Mr. Boudin: That is objected to.

The Court: Overruled. He may answer yes or no.

Mr. Boudin: Exception.

A. Yes, sir.

2999 Q. Before you unloaded it, who spoke to you about it?

Mr. Boudin: That is objected to, if your Honor please.

The Court: He may answer, if he knows.

A. I do not know.

Q. You mean you do not know the name of the person who spoke to you? A. That is right.

Q. Did anyone speak to you about unloading that merchandise to identify himself or themselves, if it was more than one, in any way other than by their name?

Mr. Boudin: I object to that.

The Court: I sustain the objection. You may first show whether on any subsequent occasion he ever

3000 saw the person, whether he ever ascertained who the person was, or whether it was any one of the persons here, whether he ever saw the person in company with any of the persons here.

Mr. Ennis: Yes, your Honor.

Q. Did you ever see the person who spoke to you on that occasion on a subsequent occasion? A. I don't know what you mean.

Q. Well, did some people speak to you about unloading on that occasion? A. They did.

Q. Did you ever see them again? A. I couldn't tell you whether I did or not, because I don't know who they were.

Q. Did you ever see them in the presence of anyone whom you knew? A. Indeed I didn't.

Q. Will you stand up, Mr. Pritts, and look around the courtroom and tell us if there is anyone here who spoke to you on that occasion? A. (Standing) I couldn't tell you whether they are or not.

The Court: You don't see anybody?

The Witness: I don't see anybody that I could identify. 3002

Q. Do you see anyone here in whose presence you ever saw these persons?

The Court: If he doesn't see anyone here that he recognizes——

Mr. Ennis: I don't think I made the question that broad, your Honor.

By the Court.

Q. Did you go more than once to Marks Bros.? A. I did.

Q. After this occasion? A. After that occasion.

Q. How many times? A. I couldn't tell you.

Q. Well, approximately? A. Oh, probably a half dozen times. 3003

Q. How often did you go there? A. Oh, we went there sometimes twice a week, sometimes——

Q. You may be seated. A. (Continuing) Sometimes not for a month.

Q. Well, now, you spoke of this occasion in the spring of 1937. Do you know when you next went there after that? A. The next week I was up again.

Q. You don't recall now that any one of the persons whom you saw on the first occasion when you didn't unload your own truck were there on the second occasion? A. No, I don't.

By Mr. Ennis.

Q. Did any of these persons whom you saw there unload your truck? A. They did.

Q. Where did you first see those persons? A. Over in the diner.

The Court: That is where you had your breakfast?

3005 The Witness: That is where I was eating.

Q. Did you pay those persons for unloading your truck? A. I did.

Mr. Boudin: That is objected to, if your Honor please.

The Court: I will allow it.

Mr. Boudin: Exception.

Q. Did you request those persons to unload your truck?

Mr. Maguire: Objected to.

A. No.

3006

The Court: Sustained.

Q. Did you have any conversation with those persons about unloading your truck? A. I did.

Q. Did those persons state to you what they were?

Mr. Maguire: I object to that.

Mr. Boudin: I object to that.

The Court: Sustained.

Q. Did you observe those persons unload your truck? Did you watch them do it? A. I did.

Q. How long did it take?

Mr. Boudin: Objected to as immaterial.

The Court: I will allow it.

Mr. Boudin: Exception.

The Court: It may be material.

A. About an hour.

Q. About an hour? A. About an hour.

The Court: How many of them were engaged in unloading your truck? 3008

The Witness: Two.

Q. How much did you pay them for unloading your truck.

Mr. Boudin: I object to that.

The Court: I will allow it.

A. $8.

The Court: Each or together?

The Witness: $8 for two of them.

Q. Did those persons who unloaded your truck handle the delivery receipts for that load? A. They did.

Q. Did you see what they did with them? 3009

Mr. Boudin: I object to that.

The Court: I will allow that.

Mr. Boudin. Exception.

A. I did not.

Q. Did you see them handle them? A. They got them off the consignee's desk and walked out with them.

Q. Did you see where they went? A. I did not.

The Court: Did you get the receipt for the delivery of the merchandise?

The Witness: I did. I had the receipts when I came and gave them to the consignee and he laid them on his desk; that is the bills, bills of lading.

Q. And those persons picked them off the desk and walked out with them? A. They did.

By the Court.

3011 Q. Did you ever see them after that? A. Yes, sir, they came back.

Q. No; I mean did you ever see these receipts after that? A. Yes; they brought them back.

Q. What did they do with them? A. I guess all they wanted with them was——

Q. No. What did they do with them? A. Oh, they took them out.

Mr. Boudin: If your Honor please, I don't quite understand. Does your Honor mean when they brought them back or——

The Court: When they brought them back.

Mr. Boudin: Oh.

3012 Q. You said some people took the receipts off the desk. A. In the consignee's office.

Q. In the consignee's office. Then they brought them back, did they? A. Yes, they brought them back.

Q. To you? A. Brought them back and handed them to the consignee.

Q. Did you get them? A. I got one of them and he kept one of them.

Q. And you took that back to the shipper? A. Our shipper, that is right.

By Mr. Ennis.

Q. Did you have any conversation with those persons in the diner while they held the receipts in their possession?

The Court: Well, wait a minute. I will sustain the objection to that. There isn't any proof that they had the receipts when they were in the diner. As I recall the testimony, he said he went in the diner for breakfast. He hadn't started yet to unload the truck. 3014

Had you?

The Witness: No, I had not.

Mr. Ennis: This was another occasion.

The Court: How do I know that?

Mr. Ennis: Well, I tried to bring it out through this witness, your Honor.

The Court: I thought we were talking about the first occasion when he arrived at 2 o'clock in the morning.

Mr. Ennis: If the Court please, I did not make myself clear. I did not mean it was another day; but it was another conversation in the diner that I was attempting to bring out through the witness.

The Court: You can do that by showing whether he was in the diner more than once on that day. 3015

The Witness: I was.

Q. At that time were these men who unloaded your truck in the diner? A. At what time?

Q. The second time when you were in the diner? A. They were.

By the Court.

Q. When you had your breakfast in the diner in the morning, did you see those men in the diner who subsequently unloaded your truck? A. Yes, sir, they came in.

Q. Now after the truck was unloaded did you again visit the diner? A. I did.

Q. And did you at that time see in the diner the men who had unloaded your truck? A. I did.

Q. As I understand it, those men who unloaded your truck took the receipts from you, is that right? A. That unloaded the truck? They didn't take the receipts from me. I laid them on the desk of the consignee.

3017 Q. Was that before or after? A. That was before.

Q. Before the truck was unloaded? A. The consignee received the receipts.

Q. Now, after the truck was unloaded did somebody take those receipts off the desk? A. After the truck was unloaded?

Q. Yes. A. I couldn't tell you. I left. The consignee had the receipts and I had a receipt.

Q. When did you get the receipt that you received? Before the truck was unloaded or after? A. After the receipt —I got it after the truck was unloaded.

Q. Now when did you see somebody take those receipts off the desk? A. That was before we started to unload the truck.

3018 Q. And was it either one of the two men who unloaded your truck who took the receipts off the desk? A. They were both together.

Q. Well, did either one of them take the receipts off the desk? A. Yes, one of them did.

Q. And do you know what he did with the receipts after he took them off the desk? A. They both walked out of the office.

Q. And did they go anywhere before they started to unload your truck? A. They went away.

Q. And how long were they gone? A. Oh, I couldn't tell you. Probably ten minutes, maybe fifteen.

Q. Now, when they came back did you see the receipts? A. I did.

Q. What if anything did you see either one of these men do with the receipts? A. They fetched them back and laid them where they got them.

Q. Then proceeded to unload? A. No. They took—first they came there and took——

Q. No. Don't tell us any conversation at this point. They brought the receipts back. They had been away about 3020
10 minutes, is that right? A. 10 or 15 minutes.

Q. How long was it after that that they began to unload your truck? A. Probably an hour.

Q. What time was that approximately? How long was that after your breakfast? A. Oh, I would say around 9 o'clock.

Q. How long did it take to unload the truck? A. About an hour as nearly as I can tell.

Q. Then how long after that was it that you went back to the diner? A. I didn't go back to the diner after we unloaded the truck. I went back to the diner the second time before we unloaded the truck.

Mr. Ennis: If the Court please, I know the story and if I may, I may be able to help here. 3021

The Court: All right.

By Mr. Ennis.

Q. You said that the men came back in about 10 minutes with the receipts? A. Yes, sir.

Q. Where did you then go? A. I went back over to the diner with them.

Q. What did you do in the diner?

Mr. Boudin: That is objected to as immaterial and irrelevant.

The Court: I will allow him to say what he did.

A. I talked over the telephone.

Q. You talked over the telephone? A. Yes.

Q. In the presence of those men? A. That is right.

The Court: Whom did you talk to?

Mr. Boudin: That is objected to, if your Honor
3023 please.

The Court: Overruled.

Mr. Boudin: Exception.

The Witness: My boss.

The Court: Well, I see that it is five minutes after one. So we will recess until ten minutes after two.

(Recess to 2.10 P. M.)

AFTERNOON SESSION—2.10 P. M.

(The roll of the defendants was called and several defendants were not present.)

3024 (The following proceedings were had not within the presence of the jury.)

The Court: While we are waiting for them, and in the absence of the jury, frequent reference has been made in this case to the decision in the Furriers case; that is, United States v. International Fur Workers Union, reported in 100 Fed. Rep, Second Series, at page 541, and the pith of it so far as this case is concerned is stated in the headnote No. 15: In a prosecution against labor

unions and officers and agents in fur dressing industry for conspiracy to violate anti-trust acts, evidence respecting threats of violence and actual batteries and bombings directed against dressers who were not members of Trade Corporation, without identification of persons making threats or committing violence held competent where there was other evidence that defendants were parties to conspiracy.

Upon the examination of the witness who was on the stand at recess today, as I recall his testimony, he said that the first time that he had any difficulty was at Marks Bros. in the Bronx in the spring of 1937. I do not recall any previous evidence of any difficulties at Marks Bros. 3026
or anywhere in that vicinity. I took over the examination of the witness myself to see whether there were circumstances or other evidence upon which the Court would be justified in allowing the testimony of this witness to go to the jury under the broad rulings that have heretofore been made by the courts with reference to the admissibility of evidence to establish a conspiracy, and I asked this witness if he recognized these men. He said he did not. He said that there were other occasions, subsequent occasions, when his truck was unloaded by other persons. He did not however identify the two men, or either of them, on the first occasion with the men on any of the subsequent occasions. Then I asked him about the amount of money that was paid to see whether it was $9.42, as has been shown to be the sum, with certain exceptions, that 3027
has been paid upon other occasions. My recollection is, and if I am wrong on that counsel can correct me, that he said the amount was $8.

Now we know that there are rackets going on in the City of New York; at least, we are told about them in the press. There may have been other rackets going on in the Bronx that had to do with various lines of industry, and until there is something that connects up what may

have transpired so far as this witness is concerned at Marks Bros. with some previous activity of the defendants who are charged with conspiracy in these indictments, I do not feel disposed and do not believe I would be justified in allowing the evidence.

There has been some proof here that these out of town trucks came in through the Holland Tunnel, that they stopped over at Unionville, that some of the drivers were approached over there by persons who had been identified as connected in some way or another with the defendants. There has also been some proof here that the office of the union is located at a point where it commands a view of
3029 the exit of the Holland Tunnel, and that drivers as they came out of the Hudson Tunnel had been approached. There isn't any suggestion here as yet how this witness came into New York, whether he came through the Holland Tunnel or otherwise, whether he stopped at Unionville over in Jersey or at any other point, whether he was ever approached over there as others have been shown to have been approached, whether he was approached on the New York side, at the exit of the Holland Tunnel, as others have been shown to have been approached, but he has been asked quite directly to testify to conversations or occurrences supposed to have been had by unknown people, and I don't know. It might be that another local, not charged with any connection with the local here at all,
3030 may have been carrying on some activity in the Bronx. I suppose there are locals in different parts of New York. I don't know. This local which is before the Court here, 807, has its situs according to the testimony at Varick and Hudson Streets. Now I don't know whether that local is supposed to have general jurisdiction over the five boroughs or not. I don't know whether it is consented or will be consented, as part of its alleged activities that it was interfering with the jurisdiction of other locals in the Bronx, Brooklyn or Queens, but it seems to me, as

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Judge Swan pointed out, that there must be some other evidence that connects up with the alleged conspirators here to make that testimony admissible.

Mr. Cahill: May I say a word, your Honor?

The Court: Yes.

Mr. Cahill: The only basis of distinction that I should urge from what your Honor has stated is this: Your Honor rests weight on the fact that there has been no testimony here before us to occurrences at this particular warehouse, and that is the fact.

The Court: Or in that vicinity.

Mr. Cahill: Or in that vicinity. Now, if this were a prosecution that had to do with coercion or violence as to, let us say, the consignees themselves, we have a parallel, as I see it; in the Fur Workers case because as your Honor points out in that decision the Court admitted evidence of violence as to places of business of people in the fur industry, and I would analogize those places of business to the warehouses of the consignees, but we don't have that situation here. The place of business that we have to do with here is the place where any given over-the-road truck is located at any time for the unloading of interstate commerce. That place I would have analogized to the place of business of the furrier in the case in 100 Fed. (2d). Now, since a place of business of that sort is of a migratory nature, of course it is less fixed from the standpoint of space than would be the warehouse or the furrier's place of business, and would establish to my mind the situs on which Judge Swan relied in Re Furriers.

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As to the other point, on the rate of pay given, while there has been much proof here that the rate of pay was $9.42, your Honor also has in mind, of course, that there has been some testimony as to other——

The Court: Well, has there been any testimony where the amount was $8?

Mr. Cahill: I don't recall anything except for the lighter truck, I think there was a rate for the lighter truck that was $8, and some cents. That is all I recall. There is called to my attention a provision here, 5-ton automobile chauffeurs, $48, which for a 6-day week would be $8 a day. Now, if this were a 5-ton truck I think it would fit that truck. I don't think we have before us yet what the tonnage of the truck was.

The Court: Let me ask you a question and I don't want you to answer it, because it might embarrass the presentation of your case, but I ask you the question to show you my state of mind: It would seem to me that at
3035 a place like R. C. Williams, and perhaps at the Marks Bros. up here, persons who are in charge of the shipping or receiving of merchandise have some knowledge of the existence of some alleged trouble. Certainly in this case we have the situation where the driver came in and he had his waybill or his bill of lading, or the shipping documents, and he went into the place of business of the Marks Bros. and he put those papers on a desk. Now perhaps there was no one else there. I don't know. Two men come in and pick up the papers. Let us assume that they had no lawful right to pick the papers up. They picked them up and went out and then brought them back and put them down again. Now, this is the question, and I don't want you to answer because you are controlling the order in which you are submitting your proof here: Is there any-
3036 body connected with Marks Bros. who might have seen those two men on the day in question when this driver was up there, who might have seen those men on some other occasion around that place, or did these two men just come there on that one morning, and unfamiliar in that event with their surroundings, go into that place as strangers and pick up these papers off the desk and walk out of the place with them, and then after they had served some purpose or other bring them back and put them down, and nobody said a word about it?

Mr. Cahill: I can't answer your Honor's question——

The Court: I don't want you to answer the question.

Mr. Cahill: Not from any lack of desire——

The Court: I don't want you to answer the question, but I am indicating to you what is in my own mind with respect to the possibility of the establishment of identification of persons to make the testimony admissible.

Now I point out to you that yesterday we had a situation about over in Brooklyn. A driver had discharged merchandise in Long Island City. He went down to Brooklyn and there loaded sugar, and he had some words anyway with somebody unidentified. I shut the testimony out. I said I did not need to consider it at that time, and I don't need to consider it now or ever in connection with that incident, because you did what I would expect to be the reasonable thing to do. When this man left over there after discharging his load he went to Brooklyn and had some difficulty. He knew Cahill; he had testified he knew him. He testified that Cahill had unloaded his truck over in Brooklyn, and you brought out the fact that he telephoned over to Long Island City and he got Cahill on the wire and he told Cahill what the trouble was and Cahill said, "I will come down there," and Cahill came down there and Cahill found out when he got down there what the situation was, and told this fellow to pay $9.42 to the unidentified person, but he was identified then so far as the witness was concerned, because Cahill said, "Pay him." And the man didn't have the money and Cahill gave him the money, the $9.42 with which to pay him. So you absolutely dissipated the fog around the contention of the applicability of the Furrier case by proving what you thought, or your side thought, you couldn't establish unless I was guided in my rulings by the opinion in the Furrier case. Now I say that until you have exhausted yourselves with respect to the situation at the Marks Bros., and you may; I don't know; you may establish in that connection,

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as effectively as you did in the American Sugar incident yesterday, there is a casual connection there between the unidentified person and somebody connected with this case. But let us take another situation: suppose that one of these men, one of these truckmen, was driving in here from Willimantic, Connecticut, and on a certain morning as he was about to leave his place of business up in Willimantic several men came around there and took him off the truck and beat him up and turned his truck over. Would you say that it would be admissible to show because there was a strike on down here in New York and that man was bringing merchandise in here every day that somebody who
3041 perpetrated those acts of violence up in Willimantic, who is unidentified, that testimony could be given here as to conversations had with them and as to acts done by them? What would be the position of any defendant on trial? All he could say perhaps in his own defense is, "I was never in Willimantic in my life. I don't know anybody in Willimantic. I never knew anyone who ever went there. I haven't anything to do with anything that ever happened in Willimantic at all."

Mr. Cahill: I entirely agree with the Willimantic situation.

The Court: Then all right. Where are you going to draw the line in bringing it from Willimantic down to the Harlem River?

Mr. Cahill: New York City, Judge.

3042 The Court: New York City line?

Mr. Cahill: Yes; because, as I understand it, the proof here all has to do with so-called City men. The witnesses have repeatedly used that expression "City men." I don't recall at the moment any one witness who has not at some point or other in his testimony used that expression. They have gone further and have said each time in substance, testifying to conversations with identified defendants, that the defendants said to them, "You can't come into New York City unless you do thus and so."

The Court: Well, that is a circumstance, but you have got to have more than that.

Mr. Cahill: I realize that, but I just pointed that out to your Honor because I am glad to have this discussion from the standpoint of your Honor's interpretation of the Fur case——

The Court: Well, I would like you to realize that I bear in mind one thing: Every defendant in this case and any other case, any other criminal case, comes in here under the presumption of innocence until that presumption is overthrown by the proof offered by the Government to establish his guilt, and that must be by the established measure of proof. Now, there is a great deal more lib- 3044
erality, so far as the Government is concerned, in the prosecution of a conspiracy case than almost any other form of criminal litigation: The admission of hearsay testimony in a criminal case, for example, which is not permitted in any other type of case, which sometimes places a defendant at quite a disadvantage. I took those circumstances into account. I am not going to sit here and rule on the supposition that because a defendant has been indicted and because there is some evidence tending to establish the allegations of the indictment, that I ought to let in all the additional evidence as to which I might have some reasonable doubt as to its propriety on the theory that because there is some evidence in, that this additional evidence ought to come in. I want to satisfy myself that there are such circumstances already in existence as justify 3045
the assumption that the Court is entitled to submit to the jury the proof offered to establish the conspiracy, but at the same time not having the jury feel that the rights of the defendants have not been fully protected not alone by objections which counsel make, but by proper rulings on the part of the Court; and I am not going to strain the construction of any decision of any court higher than myself against the defendants in any case. I am going

to try to give it a reasonable construction; I am not going to decide anything for them and against the Government if it permits of a reasonable interpretation in favor of the Government; but on the other hand, when, as Judge Swan particularly pointed out, where there was other evidence, I want to be sure that in this particular instance the other evidence is comparable in character and quality with the other evidence upon which he based his decision in the Furrier case.

Mr. Cahill: Judge, we of course of the Government respect the presumption of innocence of these defendants——

3047 The Court: Well, that I know.

Mr. Cahill: —and because we urge with vigor upon the Court our views in regard to the Furrier case, let me say we do that only because we feel it incumbent upon us to be as vigorous in the prosecution of our side of the case as the defendants.

The Court: Mr. Cahill, it is the duty of the prosecutor to prosecute with vigor and it is also his right to strike hard blows. There isn't any question about that. The Supreme Court laid that down in the Singer case. The only thing the Court said there was, and I think they demonstrated in that case there was ample justification for it, that he could not strike foul blows and it becomes a matter of discretion between a foul blow and a hard blow.

3048 Mr. Cahill: I entirely agree. The point of difference, Judge, as I see it, is on the expression which your Honor has last referred to. "Other evidence." Your Honor interprets that as evidence about the place about which the witness is talking, that is, that particular warehouse——

The Court: Not necessarily. Suppose there were other places up in the vicinity of the Marks place of business, and to get to these places—there might be a half a dozen of them—trucks uniformly go up Southern Boulevard, for example. Now, if there were acts of violence in

Southern Boulevard within the range, within the vicinity of all these different places, and there were men at those places where acts of violence were committed, who could be shown to either be themselves defendants or to have been in association immediately preceding or after with persons who are on trial, there you would have a connecting circumstance. I have not ruled here that in every instance you have to put a defendant on the spot; but what I have heretofore said was that if a man—and there are several instances of it—if a man made a threat on a certain occasion and there was no defendant present, but that the witness who testified to that threat saw that man on other occasions in company with the defendants A or B or X or G, that was some evidence that there was a causal connection between the person who made the threat and that particular defendant with whom he had been seen in association. 3050

Mr. Cahill: Following out that line of thought, your Honor, and in reference to my remark about setting the bounds as those of the City of New York, as I recall the proof, we have had proof as to identified defendants in this case now as to four of the five counties of the greater City.

The Court: And New Jersey.

Mr. Cahill: And New Jersey as well.

The Court: And Pennsylvania.

Mr. Cahill: And Pennsylvania; but I am speaking now of acts of stopping of trucks bound into New York. 3051

The Court: Well, that is true, but what relation has the stoppage of trucks on the Boston Post Road coming in from Connecticut at one time with the stoppage of trucks even on the Boston Post Road coming in from the West at another time?

Mr. Cahill: I think, and your Honor has now given me the fifth county, because there where the Boston Post Road comes in, I take it, is immediately adjacent to Bronx County——

The Court: No, the Boston Post Road comes into Bronx County.

Mr. Cahill: Yes. So that we did have some testimony it was within the city limits, as I recall it now; we have had testimony as to all five counties.

The Court: No. You lack testimony as to Richmond County.

Mr. Cahill: Oh, we have that. We had the FBI agent who went over to the Procter & Gamble factory.

The Court: Yes, that is right. I was thinking about truckmen.

Mr. Cahill: So now we have the five counties of the
3053 greater city, and as you said a while ago, what you are looking for is the circumstantial guarantee of the relevancy which is, I agree, what was laid down in the Fur Workers case, and I think you put your finger on it when you said that in the Willimantic situation it would be an abuse of discretion under the Fur Workers case to let it in; but where as here the geographic scope of the conspiracy, if such there be, has been shown to be all of the circumference of New York—there you have the circumstantial guarantee of trustworthiness that you were looking for to find under that decision.

The Court: Well, somebody may put a newspaper in front of me, but I do not read it the way they tell me about it.

Mr. Cahill: Judge, Mr. Ennis asks permission to speak
3054 on relation to the particular evidence in this case, if he may.

The Court: Yes.

Mr. Ennis: If the Court please, to supplement the general remarks, realizing that the Court would require that protection which we always want the defendants to have, this sort of thing we have left out entirely.

Now, one witness, Frank Bernot, told us about a beating over in Brooklyn he had, but at that time there was a

plumbing strike there, or adjacent to it; it was a 50-50 chance it might have arisen out of that. So of course we eliminated it.

Now, coming to the witness on the stand, and to meet the test of discretion, we attempted to frame our proof this way: All of these people are drivers representing Eastern States Transportation. First we developed the testimony of the witnesses who knew Michael Cahill and could bring their testimony within the realm of identification; and the witness whom we now have on the stand and the next witness, both drivers for Eastern States Transportation—we left them until the end to see if we could establish a satisfactory foundation; and we felt 3056
that if with the background of their co-workers, as it were, with identified defendants, that we could then show that they were engaged in the same operation of bringing in enamel and glass, and that they were stopped by men, a group of men who said to them, "We are 807 men," or showed them 807 books; that it was reasonably clear——

The Court: There isn't any proof so far as this witness is concerned with respect to any books.

Mr. Ennis: With this witness there are no books, your Honor; that is why I put it in the alternative.

The Court: All right.

Mr. Ennis: Now, the question I wanted to ask this witness, what I felt was the crucial question, was, did they say what they were? That question——

The Court: Well, suppose I send a gang of men uptown 3057
somewhere and tell them to hold up a truckman, and if the truckman said anything to them about it, to say they were from 807—how would anybody connected with 807 disprove it?

Mr. Ennis: If the Court please, it would be difficult, if not impossible, to prove it——

The Court: That is the issue.

Mr. Ennis: —and if there was such an isolated instance——

The Court: I don't think courts can permit the introduction of proof against a defendant of a hearsay character where it is wholly reasonable to suppose that the defendant could not possibly refute that testimony if he wanted to.

Mr. Ennis: If the Court please, I do not think that the likelihood of the proof being connected with the defendant, when the Government offers it, turns upon the available sources of refutation. It seems to me we should satisfy your Honor, as we try to satisfy ourselves, that
3059 these people who said they were 807 men probably were.

The Court: Mr. Ennis, suppose this case were now concluded and the jury went out to deliberate, and in their deliberation there was created a doubt in their minds, and some of the jurors felt that there was a reasonable doubt as to the guilt of the defendants and some of the jurors felt that there was good and sufficient reason to convict the defendants; and in the discussion that took place between those favorable to a conviction and those who had a doubt about it, this very type of testimony of unidentified persons was the circumstance which they were considering because of its violence; let us assume that it was testimony of the greatest violence in the case, but in no instance, so far as that particular testimony was concerned, was anybody identified—would you say that was
3060 a fair trial if the jurors who were undetermined, undecided, finally yielded and joined the jurors favorable to a conviction and brought in a verdict which was based in its final analysis and determination upon that testimony of violence with respect to persons of not any designated identification?

Mr. Ennis: Well, accepting the hypothesis, your Honor, that they based their verdict on that, I think I would agree with you, but, of course, your Honor, I do not feel

that that is our case, that we are going to offer here this extreme testimony with respect to unidentified persons.

The Court: Well, I do not know what your testimony is. I am not ruling on what the basis of what the testimony is. I am ruling on the basis of whether as a matter of law any testimony, no matter how strong it is or how weak it is, ought to be admitted upon this hypothesis. That is the point before me.

Mr. Ennis: I submit, your Honor, that that question of law should not be decided on the basis of the most prejudicial testimony possible because there is where I think your discretion will protect the defendants.

The Court: Well, I think I have indicated to you where 3062
at this time you have not yet laid a sufficient foundation.

Mr. Ennis: Well, if the Court please, it has been very helpful and it will help us in gauging our proof.

Now, in leaving this discussion, might I submit that our understanding of that circuit decision is that "other proof" means other proof connecting the defendants with the conspiracy and not other proof of the same type as the proof of unknown persons offered to prove the nature of the conspiracy; and, of course, your Honor, in convicting these defendants we want to convict them on matters that we associate with them, but we would like to show and we feel the acts of unidentified persons will show what we consider is the complete city-wide sweep of this testimony.

The Court: I do not suppose that there is any law 3063
book in the world which has been read as much and which has been the basis of as much discussion as the Bible, and I do not think that there is anything that could be the subject of greater diversity of opinion than the discussions of the Bible have proven to be throughout the ages. So don't expect too much in urging that with a decision such as this, based upon one set of facts, that we

3064 *Proceedings.*

can't disagree with respect to its application to a case involving a different set of facts.

Mr. Ennis: And in preparing the proof I wanted to say to your Honor we did not mean to just throw that decision down blindly as some almighty rule. We examined the record. For example, all the violence of that case is anonymous violence. We tried to construct our proof not to fit that case but to come well within it and your Honor's discretion of what you think is proper will be very helpful on that.

The Court: Well, as I said the other day, if there were a strike going on and there were 2,000 people out in front
3065 of that place of business who were associated with that strike, and somebody threw a brick, it would be a physical impossibility to identify who threw the brick; but the fact that they were all congregated there and that the brick came from a portion of the crowd where there were people who had been exerting some violence in connection with the prosecution of that strike would certainly make the throwing of that brick admissible without the identification of the person who threw it. But if you have a strike going on against a concern manufacturing underwear up in 28th Street, and although they may be making deliveries in different parts of the City of New York and within the five counties or the five boroughs, and you have an isolated circumstance that happens down in Tompkinsville, you have got to show that that situation
3066 down in Tompkinsville has some relation to what is going on in other parts of the city in order to make it possible to establish proof by the acts or the conversations of persons otherwise identified.

Mr. Cahill: One last thought on that subject, Judge: Does it have any weight in your mind that it is the same trucking company that is involved? That is, have the witness say, who is a driver, let us say, for the X Trucking Company, who identified some of the defendants——

The Court: Well, it has some weight. Of course it is not the same trucking company. It is the same trucking commission concern.

Mr. Cahill: The same company, as I understand it, going under the name——

The Court: What I take the fact to be here, there is an aggregation of persons down in Pennsylvania each of whom owns one or a small number of trucks and they might not know how to get the business down in Pennsylvania to bring it to New York and then get the business in New York to bring it to Pennsylvania; and so the Eastern Transportation Company comes into the picture in the same way that a ship broker operates because 3068
somebody who owns a vessel up in Sweden would not know how to get a cargo in New York, either back to Sweden or over to Australia.

Now, of course, the Eastern Transportation Company, they stand in the relation of the agent of the shipper; but here you have a number of independent operators, and it does not seem to me at least that the presumption carries that they operate in the same way that they would if they were all employed driving the trucks owned by one owner and subject to the regulations established in that case by the owner of all of the trucks.

Mr. Cahill: Well, what I was searching for was these circumstantial guarantees. If, for example, the legend on the side of these trucks, even though they were of different ownerships, let us say, was that of the broker, as you 3069
call it——

The Court: Well, I have not heard anything about that.

Mr. Cahill: As I say, I don't know whether that is the fact in the particular instance or not, but if that was the fact it might afford a further circumstance.

The Court: Well, as I say, what you have to do is to establish the further circumstance.

Mr. Cahill: Thank you very much.

The Court: If you do it will be up to me to determine whether you have established sufficient facts to make this testimony admissible.

Mr. Ennis: If the Court please, I won't go on at length, and it has been very helpful to us, but I would like to make two points: You mentioned the consignees. That would be the kind of proof that would help a great deal. Now I won't say for the Marks Bros. At present I don't know. But there we are dealing with people who are dependent for the operation of their business on Local 807 men handling their local trucks, and we have a problem
3071 of getting the proof from them that of course we don't have from the truck operators who have things proper.

The Court: I merely asked whether the people connected with the receivers, the consignees of this merchandise, by reason of the fact that they are static; so far as their business is concerned they are stationary. Now, the truck driver, he comes in when he has a load; but if there were members of 807 or anybody else around a certain warehouse day in and day out, whether there would not be somebody connected with the warehouse who could identify one or more of those persons. That is the question I asked. I said you need not answer it because I was not asking you to disclose what your intended proof is, or to take the presentation of your proof out of the order in which you have arranged to present it.

3072 Mr. Ennis: Well, of course, we want to present it in the order we think, if proper, it will get in. That is what we are interested in.

The Court: That is your duty.

Mr. Ennis: Now, in calling back this witness, your Honor, even if you decide his testimony is not admissible, may I ask him the questions up to that point so I will have it clear?

The Court: Well, you bring him back here and lay your foundation.

Mr. Ennis: Yes, I will do that.

The Court: I have probably already done more examining than I really should do.

Mr. Ennis: Well, it has been very helpful, your Honor.

The Court: Well, it may have been helpful to you, but the defendants might have thought that it was prejudicial to them. It is not the business of the Court ordinarily to examine the witnesses at all. There are able counsel in this case for that purpose. It is only the business of the Court to see that the jury's pathway is properly 3074
guided so that when the case is submitted to them it is in understandable shape, and not to have it presented in any confused way; and sometimes I interrupt because I am not clear in my own mind that I understand what the situation is, and I am doubtful if it is clear to the jury.

All right.

(The jury returned to the court room.)

CHARLES R. PRITTS resumed the stand and further testified as follows:

Direct examination (continued) by Mr. Ennis.

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Mr. Ennis: Shall I proceed, your Honor?

The Court: Yes, go right ahead.

Q. Mr. Pritts, going back to that time when you did not unload the truck yourself at Marks Bros., how did you come into New York? Over what road? A. I came in on Route 29.

Q. How did you come into New York City? A. Right through the tunnel.

Q. Which tunnel? A. The Holland.

Q. The Holland Tunnel? A. Yes.

Q. What size truck did you have? A. I hauled 5½ tons.

Q. What kind of a truck was it? A. A Diamond T, B plate.

Q. Now, was this occasion at Marks Bros. the first time when you did not participate in unloading your own truck in New York City in 1937? A. That is the first time that I ever helped to unload it, yes, sir.

By the Court.

3077 Q. When you came into New York, did you come by Unionville, New Jersey? A. Unionville? I came through Unionville.

Q. Did you ever stop there? A. No.

Q. Never did? A. Never did, as I remember.

By Mr. Ennis.

Q. You did not use Unionville to gas up? A. No, I did not.

Q. Now, subsequent to this occasion at Marks Bros., were you ever stopped any place else in New York City? A. I was stopped, yes.

Q. Did anyone else unload your truck on those occasions——

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Mr. Boudin: I object to this as immaterial.

The Court: I will allow it.

By the Court.

Q. Where were you stopped? A. I was stopped once up here in Eleventh Avenue.

Q. Eleventh Avenue and where? A. Well, I just couldn't tell you; it was just up along there, I didn't pay no atten-

tion to just exactly where I was; the only thing I know was it was Eleventh Avenue.

Q. Do you know who the persons were who stopped you? A. I did not.

Q. Did you ever see them before or since? A. Not as I recollect.

By Mr. Ennis.

Q. How many persons stopped you?

Mr. Boudin: I object to that as immaterial.

The Court: Sustained.

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Q. Do you recall the load you had at that time, the merchandise? A. I had a load of glass for Seaboard Glass.

Q. Seaboard Glass? A. Eleventh Avenue.

Q. Did these persons who stopped you unload your truck?

Mr. Maguire: Objected to.

The Court: Sustained.

Q. Going back to this occasion at Marks Bros. the second time after breakfast when you were in the diner with these men, what did you do when you first went in the diner with these men?

Mr. Boudin: Objected to, if your Honor please.

The Court: Sustained. 3081

By the Court.

Q. Was this time you stopped on Eleventh Avenue before or after— A. Before.

Q. —the time that you spoke of at Marks Bros.? A. Yes.

Q. How long before? A. Well, I couldn't just tell you exactly; I suppose a week maybe.

3082 *Charles R. Pritts—For Government—Direct.*

Q. Now, did you see anybody at the time you were stopped at Eleventh Avenue whom you afterwards saw at Marks Bros.? A. No, I did not.

By Mr. Ennis.

Q. Mr. Pritts, placing yourself again in the diner the second time, were two men present who unloaded your truck? A. They were.

Q. Were other persons with them? A. Not in the diner.

Mr. Boudin: I object to that as immaterial.

The Court: I will allow it.

3083

A. (Continued) Not in the diner.

Q. Not in the diner? Just the two men and yourself? A. And myself.

By the Court.

Q. Was this the first trip that you ever took to Marks Bros.? A. No, it was not.

Q. How many previous loads had you taken? A. Well, I can't recall.

Q. About how many? A. Oh, I suppose a dozen loads anyway.

Q. And over how long a period of time? A. Oh, I hauled there two years and a half.

3084

By Mr. Ennis.

Q. Did you make a telephone call in their presence?

The Court: He says he did. I thought he testified to that this morning.

Mr. Ennis: Well, if the Court please, as I understand his story, although he spoke over the tele-

phone, he did not make the call, and I would like to bring that out.

The Court: All right.

By the Court.

Q. Didn't you testify this morning that you called up or talked over the telephone to your boss? A. I don't recollect if I did, but I did.

By Mr. Ennis.

Q. You did telephone? A. I did telephone, but I——

Q. Finish your answer. A. But I don't recollect as I 3086
testified to it this forenoon.

Q. Did you make that telephone call? A. I did not.

Q. When you entered the diner had the telephone call already been made? A. It had.

Mr. Boudin: If your Honor please, I now move to strike out the testimony about the telephone. Apparently it had not been made in the men's presence.

The Court: Denied.

Mr. Boudin: Exception.

Q. Did you have any discussion with these two men about that telephone call?

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Mr. Boudin: Objected to.

The Court: Sustained.

Q. Did these two men tell you that they had made that telephone call?

Mr. Boudin: Objected to.

The Court: Sustained.

Q. Did you speak over the telephone in the presence of these two men? A. I did——

Mr. Boudin: I object.

The Court: I will allow that.

Mr. Boudin: Just yes or no?

The Court: He said, "I did." He would not answer it yes or no.

Q. What did you say in their presence over the telephone?

Mr. Boudin: I object to that.

3089 The Court: Sustained.

Q. Did these two men identify themselves to you in any manner?

Mr. Boudin: Objected to.

The Court: Sustained.

Q. Did you have any discussion with these men about unloading this truck?

Mr. Boudin: Objected to, if your Honor please.

The Court: Sustained. Mr. Ennis, so that you will know it, I am shutting out any conversation that he had with these men because of lack of identification.

3090 Mr. Ennis: If the Court please, I did not wish to ask for any conversation until the men identified themselves, and all of my questions were directed to their identifying themselves.

The Court: That would not be enough. I could identify myself anywhere by giving the name of somebody else. That would not identify me as the person whose name I gave.

Mr. Ennis: Of course not, your Honor, but if your conduct was the same as other conduct, it might identify you as a member of a group.

The Court: Well, that you have not shown.

Q. Did you see——

The Court: You can prove that you had a telephone conversation with someone whom you never saw before; then you can show that you met the person afterward and got to be well acquainted with him so that you knew his voice; and then you can show that having become accustomed to his voice you recognize the voice over the telephone of the unknown person as the person with whom you afterwards became acquainted; but you can't have the person with whom you had the telephone conversation identify himself and make it competent in a court of law. Now, I am illustrating to you the distinction here between a course of conduct and the identification of somebody by himself before you undertake to show what the course of conduct was. You can't do that. 3092

Mr. Ennis: I had meant to show all the acts which occurred before I asked the question about whether they identified themselves by words when I attempted to bring out the testimony about payment and unloading of the truck. 3093

By the Court.

Q. Did anybody ever stop your truck over at Unionville, New Jersey? A. They did not.

Q. Did anybody ever stop your truck as it came out of the Hudson Tunnel in New York? A. They did not.

3094 *Charles R. Pritts—For Government—Direct.*

By Mr. Ennis.

Q. Did you pay for that telephone call?

Mr. Boudin: I object to that as immaterial.

A. Yes.

The Court: I will allow that.

Mr. Boudin: Exception.

Q. How much? A. $4.50.

Q. And how much did you pay to these two men for
3095 unloading your truck?

Mr. Boudin: He has already testified to that.

The Court: He has already testified. As I recall it he says he paid them $8. Is that correct?

The Witness: Yes.

Q. How long did that take, the unloading of the truck?

Mr. Boudin: I object to that as having already been testified to.

Mr. Ennis: If the Court please, if with those circumstances the witness may not testify as to whether those men identified themselves to him, the Government has no further questions. Now, may
3096 I just put this one question, your Honor?

The Court: Yes.

Q. Did you notice any union buttons on the clothing of those men?

Mr. Boudin: I object to that.

The Court: I will sustain the objection as to form.

By the Court.

Q. Did you notice anything on the clothing or the hats of any of these men? A. I did not.

Mr. Maguire: May the objection be noted?

The Court: He says he did not; but if you press the objection, I will overrule it.

Mr. Maguire: I withdraw it.

By Mr. Ennis.

Q. Did these men show you any union books? 3098

Mr. Boudin: I object to that.

The Court: I think he testified this morning that they did not.

The Witness: That is right.

Mr. Ennis: If the Court please, I was merely attempting to indicate that I had exhausted——

The Court: Well, he says they did not.

Mr. Ennis (continuing): —I was merely attempting to indicate that I had exhausted every source.

The Court: You cannot make a silk purse out of a sow's ear.

Mr. Murray: If your Honor please, I move to strike out the entire testimony of the witness on the ground that it is not relevant. 3099

The Court: I will deny your motion without prejudice to a renewal.

Mr. Murray: Exception, if your Honor please.

The Court: Do you want to cross-examine at this time?

Mr. Murray: I have nothing to cross-examine.

The Court: I will say on the record that if upon a renewal of your motion I should after reading this testimony deny the motion to strike out, I will afford you the opportunity for cross-examination.

Mr. Boudin: We respectfully except, if your Honor please.

The Court: Next witness.

Mr. Marks: If your Honor please, do you wish that witness to stay in New York until to-morrow?

The Court: No.

(Witness excused.)

Mr. Cahill: While we are waiting for the next
3101 witness, your Honor, it might be timely to put the stipulation on the record in regard to the man Brown.

The Court: I think so.

Mr. Cahill: As I understand it, counsel for the defendants will stipulate with me that the colored man Brown, testified about in the testimony of the witness Goddard, died on or about March 22, 1940. The purpose of this stipulation is that there may be no discussion as to why Brown was not called as a witness.

The Court: Well, you want to avoid any question about your not having called him by showing that he is dead and you can't call him?

Mr. Cahill: That is right, your Honor.

3102 The Court: All right. I think I will reverse my ruling as to this witness who just left the stand. I will give you an opportunity to cross-examine if you want to, but I think if I should allow the testimony to stand, that you have to forfeit your right to cross-examine if you do not elect to cross-examine.

Mr. Murray: Your Honor, I will rest on my motion to strike out his testimony.

The Court: All right. I want to avoid the necessity of bringing the witness back here and then not having any purpose in bringing him back.

HOBART PORTERFIELD, residing at Kregar, Pennsylvania, called as witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. What is your business, Mr. Porterfield? A. Lumber business just now. 3104

Q. What was your occupation at the beginning of 1937? A. I was working for Eastern States Transportation Company.

Q. What did you do for them then? A. I hauled merchandise for them.

Q. Did you own your own truck? A. Yes, sir.

Q. What kind of truck? A. Diamond T truck.

Q. What tonnage? A. 2-ton.

The Court: How much?

The Witness: 2-ton.

Q. Did you haul exclusively for Eastern States? A. Yes, sir.

Q. Did you haul merchandise from Pennsylvania to New York City? A. Yes, sir. 3105

Q. What kind of merchandise? A. Enamelware, glass, cherries.

Q. Did you unload the merchandise you hauled into New York City yourself? A. Yes, sir.

Q. Do you remember any occasion when you did not unload it yourself in 1937? A. Yes, sir.

Q. When was that? A. Some time in August of 1937.

Q. Do you recall what merchandise you were carrying at that time? A. Enamelware.

Q. Do you recall where in New York City you were taking it? A. Somewhere in South Street.

Q. Do you recall the name of the consignee? A. No, I don't.

Q. By what road did you enter New York City? A. By the Holland Tunnel.

Q. Do you recall the time of day you came through the tunnel? A. About 7.30 in the morning, along there.

Q. As you came out of the tunnel did anyone stop you?

3107 Mr. Murray: I object, if your Honor please.

The Court: I will allow it. It might have been a policeman. There is a stop light there.

Q. Well, apart from stop lights, did anyone stop you?

The Court: Well, anybody. He may answer that.

A. No.

Q. No one? A. No, sir.

Q. What time did you arrive at South Street for unloading? A. Probably 8.30, I imagine.

Q. From your experience with your truck how long would it take you to unload that load of enamelware?

3108 Mr. Boudin: Objected to.

The Court: I will allow him to state that.

Mr. Boudin: Exception.

Q. Do you understand the question? A. About an hour.

The Court: Had you carried similar loads of enamelware on previous occasions?

The Witness: Yes.

The Court: And how long did it take you to unload it on previous occasions?

The Witness: Around an hour, generally.

Q. Did you unload that particular load of enamelware? A. No.

Q. Do you know the names of the persons who unloaded it?

Mr. Boudin: I object to that.

The Court: Overruled.

Mr. Boudin: Exception.

A. A man by the name of John. I don't know his last 3110
name.

Q. John? A. Yes.

Q. Will you stand, Mr. Porterfield, and look around this court room and tell us if you see that man here. A. (Witness stands.)

The Court: You can step down if you want to, to go nearer.

The Witness: No.

Q. Do you see anyone here whom you ever saw with that man? A. Not that I recognize.

Q. Do you see any man here who ever unloaded your truck? A. No, I don't. 3111

Q. No? A. No.

The Court: Did you ever see this man John before that morning?

The Witness: No, sir.

The Court: Did you ever see him afterwards?

The Witness: Once afterwards.

Q. Where was that? A. That was up on Broadway that I saw him.

Q. You saw him on Broadway? A. Yes, sir.

Q. Was he in your truck when you saw him? A. No.

Q. Did he ever unload your truck again? A. No.

Q. Upon the occasion when this man John unloaded your truck on South Street did you pay him any money?

Mr. Murray: I object, if your Honor please.

A. Yes, sir.

The Court: I will allow him to state.

3113

Q. How much did you pay him?

Mr. Murray: I object.

The Court: Overruled.

Mr. Murray: Exception.

A. $8.40.

Q. Were there other persons with John? A. Yes, sir.

Q. Do you know the names of any of them? A. One of them.

Q. What was his name? A. They called him Vic.

Q. Vic? A. Yes.

Q. Do you know any other name for him? A. No, I don't.

3114

Q. Did you ever see him again? A. No, I never saw him.

Q. Did he ever unload your truck? A. No, sir.

The Court: You don't see him here now, do you?

The Witness: I didn't before.

Q. Will you look around again, Mr. Porterfield? A. (Standing) I don't see him.

Q. Did John or Vic show you a union book?

Mr. Boudin: Objected to, if your Honor please.
The Court: Sustained.

Q. Did they show you anything?

Mr. Boudin: I object to that.
The Court: Overruled.
Mr. Boudin: Exception.

Q. Yes or no. Did they show you anything? A. Yes. 3116

Q. What did they show you?

Mr. Boudin: I object to that.
The Court: Overruled.
Mr. Boudin: Exception.

A. They showed me a book.

Q. What kind of book? A. A. F. of L. 807.

Mr. Boudin: If your Honor please, that is objected to.
The Court: Overruled.
Mr. Boudin: I move to strike out the answer.
The Court: Denied.
Mr. Boudin: Exception. 3117

Q. Which one showed you this book? A. John.

Q. Were there any other persons present besides the three of you? A. Oh, yes.

Q. How many? A. Oh, there was a number of fellows there. I just don't know how many.

Q. Well, about how many? A. Oh, probably six.

Q. Did you first see them, those other persons, with Vic and John? A. About three of them, yes.

Q. Three of the others you saw with Vic and John? A. Yes.

Q. Did you have any conversation with them about unloading your truck?

Mr. Boudin: I object to that as calling for a conclusion.

The Court: He may say yes or no.

A. Yes.

3119 Q. Did you have any conversation with them about whether or not you were a member of a union?

Mr. Boudin: I object to that.

The Court: I will sustain the objection. Were you a member of a union?

The Witness: Yes, sir.

Q. Did you talk about that? A. Yes, sir.

Q. With these men? A. Yes, sir.

Q. Where did you go after your truck was unloaded?

Mr. Boudin: That is objected to as being irrelevant and immaterial.

The Court: He may state. Overruled.

3120 Mr. Boudin: Exception.

A. Well, I went to Brooklyn.

Q. To where? A. To Brooklyn.

Q. Where did you go from Brooklyn?

Mr. Boudin: That is objected to, if your Honor please.

The Court: Allowed.

Mr. Boudin: Exception.
The Court: From Brooklyn?
Mr. Ennis: Yes.
The Court: All right. He may answer.

A. Back to Pennsylvania.
Q. Back home? A. Yes, sir.
Q. Did you pick up a load in Brooklyn? A. Yes, sir.
Q. Did anyone help you load that? A. Yes, sir.
Q. Whereabouts in Brooklyn? A. I just don't remember.

The Court: Do you remember the name of the concern where you picked up the load? 3122
The Witness: Arbuckle Sugar.

Q. Did you pick up a load of sugar? A. Yes, sir.
Q. Did you pay anyone for loading that?

Mr. Boudin: I object to that.
The Court: Overruled.
Mr. Boudin: Exception.

A. I paid John $8.40.
Q. For loading that? A. To help me unload and load it.
Q. Was this on the same day?

The Court: Well, did John go to Brooklyn with you? 3123
The Witness: Yes, sir.
The Court: You paid him one $8.40?
The Witness: Yes.
The Court: That is, you paid it to him one time?
The Witness: That is right.

Q. When you left the Arbuckle sugar place in Brooklyn did John go with you? A. Yes, sir.

Q. Where did you leave him off your truck? A. At the Holland Tunnel.

Q. On the New York or New Jersey side? A. New York.

Q. Do you recall any other occasion upon which you did not unload your own truck in New York City? A. Yes, sir.

Q. When was that, in relation to the occasion you have just mentioned? A. Oh, probably a week later.

Q. What was that load that time? A. Enamelware.

Q. Where were you bringing that in New York City? A. Around 50th Street.

3125

The Court: Do you remember the name of the person to whom you delivered it?

The Witness: No, I don't.

The Court: Or the firm?

The Witness: No.

Q. Do you know what avenue it was near on 50th Street? A. No.

Q. Do you know whether it was on the west side or east side of Manhattan? A. I think it was on the east side.

Q. On the east side? A. I think.

The Court: Was it nearer the Hudson River or the East River?

3126 The Witness: It was nearer the East River somewhere.

Q. Did you come into New York that time through the Holland Tunnel? A. Yes, sir.

Q. What time of the day? A. I think it was around 7.30 to 8 o'clock in the morning.

Q. Did anyone stop you on that occasion at the Holland Tunnel? A. No, sir.

Q. Did you unload that load yourself at 50th Street? A. No, sir.

Q. Did you see John or Vic at 50th Street? A. I didn't see John at 50th Street.

Q. Did you see Vic at 50th Street? A. Yes, sir.

Q. Was he there when you arrived? A. No, sir.

Q. How soon after you arrived did you see him there? A. Oh, probably five or ten minutes.

Q. Did you see Vic following you on any part of your journey from the Holland Tunnel to 50th Street? A. No, sir.

Q. Did Vic unload your merchandise at 50th Street? A. No, sir. 3128

Q. Did you unload it yourself? A. No, sir.

Q. Did you have any discussion with Vic about unloading?

Mr. Boudin: I object to it as immaterial and irrelevant.

The Court: Well, the word "discussion" I will strike out. Did you have any conversation with Vic before your merchandise was unloaded? Yes or no.

The Witness: Yes, sir.

Q. Who unloaded it? A. A man by the name of Frank.

Q. Do you know any other name for Frank? A. No, sir.

Q. Do you see him in this court room? A. (Standing) 3129 No, sir, I don't see him.

Q. Did you first see Frank in Vic's company? A. Yes, sir.

Q. Did either Frank——

The Court: Ask him whether he had ever seen this man Frank before this time.

Q. Did you ever see Frank before this time? A. No, sir.

Q. Did you ever see him again after this occasion? A. No, sir.

Q. Did either Frank or Vic show you anything?

Mr. Boudin: I object to that.
The Court: I will allow it.
Mr. Boudin: Exception.

Q. Did either one show you anything? A. No, sir.

Q. Did you pay Frank for unloading your truck?

3131

Mr. Boudin: I object to that.
The Court: Allowed.
Mr. Boudin: Exception.

A. Yes.

Q. Whom did you pay? A. Frank.

Q. How much?

Mr. Boudin: Same objection.
The Court: Allowed.
Mr. Boudin: Exception.

A. $8.40.

Q. What was the answer? A. $8.40.

3132 Q. How long did it take to unload?

Mr. Boudin: I object to that.
The Court: Allowed.
Mr. Boudin: Exception.

A. Probably an hour.

Q. What did you do then? A. I went to Long Island.

Q. Whereabouts? A. Franklin Sugar.

Q. Did Frank go with you? A. Yes, sir.

Q. What did you do there? A. Picked up a load of sugar there.

Q. Who loaded it? A. Frank.

Q. Did you help? A. Yes, I helped.

Q. Did Frank go with you when you left the sugar place? A. Yes, sir.

Q. Where did he leave your truck? A. At the Holland Tunnel.

Q. On the New York side? A. Yes.

Q. Then you went home? A. Yes, sir.

Q. Did you ever again come to New York to deliver merchandise? A. Yes, sir, one time.

Q. One time? A. Yes, sir. 3134

Q. When was that with relation to the time you just mentioned? A. Probably a week later.

Q. A week later? A. Yes, sir.

Q. What was your load that time? A. Glass.

Q. Where were you taking it? A. Morris Glass Company.

Q. Where is Morris Glass Company? A. In Laight Street.

Q. Do you know how to spell that? A. I think L-a-i-g-h-t.

The Court: Do you know where Laight Street is?

The Witness: It is near the Holland Tunnel.

3135

Q. What time did you arrive at the Morris Glass place? A. About 8 o'clock in the morning.

Q. Did you unload the load yourself? A. Yes, sir.

Q. You unloaded it yourself? A. Yes, sir.

Q. Did you see Vic or John or Frank on that occasion? A. No, sir.

Q. Did you have any discussion with anyone about unloading it?

Mr. Boudin: I object to that.
The Court: Sustained.

Q Did you have any conversation with anyone about unloading it? A. Yes, sir.

Q. With how many persons? A. There were a lot of them. I couldn't tell you how many.

Q. Did they show you anything?

Mr. Boudin: I object to that.
The Court: Overruled.
Mr. Boudin: Exception.

3137 A. No, sir.

Q. They did not? A. No.

Q. How long did it take you to unload? A. Oh, about an hour.

Q. Where did you go then? A. I went home from there.

Q. Did you ever bring another load into New York City? A. No, sir.

Q. Now, Mr. Porterfield, going back to the first occasion on South Street to which you have testified: Did you have a conversation with John or Vic about unloading your truck?

Mr. Boudin: That is objected to.

3138 A. Yes, sir.

The Court: Overruled.
Mr. Boudin: Exception.

Q. Will you state what that conversation was?

Mr. Boudin: That is objected to.
The Court: Overruled.

Mr. Boudin: Exception.

The Court: I will say to the jury now that this conversation is not binding upon anybody in this case unless you determine, one, that a conspiracy is established here against two or more persons on trial and, two, that that conversation took place in furtherance of that conspiracy, and then you can only consider it with respect to the persons whom you find to have been in the conspiracy at that time.

Q. What was said at that conversation, Mr. Porterfield?

Mr. Boudin: I object to that, if your Honor please. 3140

The Court: Overruled.

Mr. Boudin: Exception.

A. An argument about——

The Court: No, don't tell us an argument. Tell us what was said. The jury will determine whether it was an argument or what it was if you will tell what the conversation was.

The Witness: They told me I had to have a City man on the truck.

The Court: Who told you that? Which one said that? 3141

The Witness: Vic.

Q. What did you reply? A. I told them I never knowed anything about it; nobody ever told me.

Q. Then what was said? A. That was the rules.

Q. Then what did you say? A. I told them I belonged to a union and they said it wasn't recognized here.

Q. You said you belonged to the union? A. Yes.

Q. And they said—— A. That it wasn't recognized by locals here.

Q. Then what was said? A. He told me I would have to hire a local man here to unload the truck.

Q. What else was said? A. Well, all I could do was hire him.

Q. You said that? A. Yes, sir.

Q. Was there any discussion about your joining their union?

Mr. Boudin: I object to that.

The Court: Yes, I will sustain the objection. Counsel should not suggest in his question the subject matter of the conversation. You can ask him if there was any further conversation.

3143

Q. Mr. Porterfield, was there any further conversation? A. Yes, sir.

Q. What else was said?

Mr. Boudin: That is objected to, if your Honor please.

The Court: Overruled.

Mr. Boudin: Exception.

A. I asked him if I couldn't join their local here.

Mr. Cahill: Judge, will you ask him to please talk up?

3144

(Last answer read.)

The Court: Whom did you address that remark to?

The Witness: To Vic and John.

Q. What did they say to that? A. They said no, the charter was closed here and I couldn't join.

Q. Was there anything else said about that by either of you? A. No. That is all, I think.

Q. Now going to the second time up at 50th Street: Did I understand you to say that Vic was present? A. Yes, sir.

Q. And someone with him you called Frank? A. Yes, sir.

Q. Did you have any conversation with them on that occasion about unloading your truck? A. Yes, sir.

Q. Will you tell us what that conversation was?

Mr. Boudin: That is objected to, if your Honor please.

The Court: Overruled.

Mr. Boudin: Exception. 3146

A. Well, I still wanted to join but they turned me down.

Mr. Cahill: Judge, please, will you direct the witness to talk up. We can't hear.

The Court: You will have to speak louder because it is very difficult to hear what you say.

The Witness: I still asked them if I couldn't join and they said no, the charter was closed and I couldn't join.

Q. Was that all that was said? A. And I would have to hire one of them to unload the truck.

Q. What did you say to that? A. I just had to hire them. That was all. 3147

Q. After this third occasion, Mr. Porterfield, to which you testified, when you reached home on that third occasion did you have a conversation with your wife?

Mr. Boudin: Objected to.

The Court: Overruled.

Mr. Boudin: Exception.

A. Yes, sir.

Q. And did you ever come to New York again? A. No.

Mr. Boudin: I move to strike out the testimony of this witness on the ground that it has no possible bearing on the crime charged in the indictment, or with reference to any of the defendants charged with any crime in the indictment.

The Court: Denied.

Mr. Boudin: Exception. Both on the ground that it is impossible to cross-examine a witness like that since he has not identified anybody by a name that could be recognized by anybody.

Mr. Murray: I have no cross-examination.

3149 The Court: Does anyone desire to cross-examine?

Mr. Boudin: Your Honor, I would desire to cross-examine but I can't——

The Court: Stop. We are not going to have any argument. Do you want to cross-examine or not? Yes or no.

Mr. Boudin: I have no cross-examination.

The Court: Very well. The witness is excused. Next witness.

Mr. Boudin: I take an exception.

The Court: To my excusing the witness?

Mr. Boudin: No. To the way your Honor addressed yourself to me.

The Court: I told you to make your objection or
3150 to start your cross-examination, but there is no occasion here for speeches and there aren't going to be any speeches.

Mr. Boudin: I wasn't making a speech. I was taking an exception.

The Court: Well, take your seat.

Mr. Boudin: I want the record to show that I have taken my seat.

The Court: Note on the record that Mr. Boudin is again sitting down.

CASSIUS C. PERRY, residing in Buffalo, New York, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. Mr. Perry, what is your occupation? A. I am a dispatcher in the trucking business.

Q. What does a dispatcher do? A. Dispatches trucks.

Q. Arranges their schedules? A. Yes, sir.

Q. How long have you been in that occupation? A. Since the 15th of December.

Q. Where? A. Last December, 1939.

Q. What was your occupation before that? A. I was 3152
president of Perry's Express, Inc.

Q. How long had you been president of that company? A. Well, we started business in 1930.

Q. What was that business? A. Trucking.

Q. Between what points? A. Between Buffalo and New York City and New Jersey.

Q. Did your company haul freight from Buffalo to New Jersey and New York City in 1937 and 1938? A. Yes, sir.

Q. Now, will you explain by what route your trucks came from Buffalo to New York City? A. Either by way of 17 into 2 in Jersey, or else 9-W around by the way of Albany.

The Court: Now, 17 and 2 do not mean anything 3153
to this jury. You mean you came down through Binghamton?

The Witness: That is right.

The Court: And into Jersey that way, or you came down——

The Witness: From Albany on 9-W on the other side.

The Court: Then you came down 5 to Albany.

The Witness: Yes.

The Court: Then down the west side of the Hudson River?

The Witness: Yes.

Q. Now, at the beginning of 1937, Mr. Perry, who unloaded the merchandise that you had delivered into New York City? A. Well, the driver and the helpers where the merchandise went. They all helped.

Q. Were they helpers at the consignees? A. Yes, sir.

Q. Did a time come when your own drivers and the helpers at the consignees did not unload this merchandise? A. Yes.

3155

Q. Do you recall when the change in the method of unloading occurred? A. Yes, I do.

Q. When was that? A. Around the first of May, 1938.

Q. The first of May, 1938? A. About that time.

Q. Were there no occasions before that upon which persons other than your drivers unloaded your merchandise? A. Yes, there was.

The Court: Well, we will suspend at that point.

Brief recess.

(Short recess.)

(The roll of the defendants was called.)

3156

Mr. Maguire: May I interrupt, your Honor, and ask if there are any prospective witnesses in the courtroom, and if there are that they be excluded?

The Court: Are there any persons in this room who expect to be called as witnesses in this case on either side? If so, will you please rise?

(No one rises.)

The Court: Have you any reason to think there are witnesses here?

Mr. Maguire: Yes. I understand an attorney representing a man by the name of Burns is in the courtroom, and I don't know whether he is to be called as a witness by the Government.

The Court: Well, I can't answer that question.

Mr. Cahill: I will say this, not to our knowledge, your Honor.

Mr. Cresse: Your Honor, I think I am the person referred to. I have no reason to believe I am going to be called as a witness.

Mr. Ennis: We have no present intention of calling Mr. Cresse, and I think that as attorney for his client it is proper for him to be here, but if he knows any fact, of course we would call him. 3158

The Court: Well, I can't tell who your witnesses may be if you can't tell. I am sure that you can't tell if you are not certain that you may need him.

Mr. Ennis: Of course, in the main we know, but we don't want to be completely foreclosed.

Mr. Cresse: If there is any question about it, your Honor, I think I'd better withdraw.

The Court: I will leave that to your good judgment as a member of the bar.

Mr. Cresse: Thank you, sir.

(Last question and answer read.)

By Mr. Ennis.

3159

Q. When was the first occasion? A. Well, we had used 807 men——

By the Court.

Q. No. Mr. Perry, this question calls for the fixing of a time either by a date or by some means, and that is all. A. Well——

Q. When was the first occasion prior to May 1, 1938? That is what counsel refers to. When was it? A. We had been using 807 men for about six months over at Dickerson Freight Forwarding Company. They were doing our pickup work and delivery, and they let us have men for the union scale hourly.

Q. You mean Dickerson Freight Forwarding Company was doing your delivery and pickup work? A. Yes.

By Mr. Ennis.

Q. Dickerson employed 807 men and when they did your work you paid the union scale for the number of hours
3161 worked? A. That is right.

Q. In addition to that method of using 807 men was there any other occasion or any other method under which your own drivers did not deliver their freight? A. Yes.

Q. Before May 1, 1938? A. Yes. In 1937——

Mr. Maguire: Your Honor, the question calls for a yes or no answer.

(Last few questions and answers read.)

The Court: Strike out after the word "Yes."

Q. When? A. The fall of 1937.

Q. What method was that?

Mr. Maguire: Objected to.

The Court: Sustained.

3162

Q. Who unloaded your freight?

Mr. Maguire: Objected to unless it is shown to be within the witness' personal knowledge.

The Court: Sustained.

Q. Mr. Perry, going to this occasion of May 1, 1938, did you have a truckload of merchandise in New York for delivery? A. Yes.

Q. What was that merchandise? A. Batteries.

Q. Where were they to be delivered? A. Oh, to be delivered in Brooklyn.

Q. In Brooklyn? A. Yes, sir.

Q. Do you recall the name of the consignee? A. No, I don't.

The Court: This was in May, 1938?

The Witness: Yes.

Q. What part of May? A. It was either the 1st or 2d; somewheres around the 1st; right around the 1st of May.

Q. Did you receive a telephone call? A. Yes, I did.

Q. With respect to that delivery? A. Yes. 3164

Q. Do you know who was calling you?

Mr. Maguire: Objected to.

The Court: He may answer.

Mr. Maguire: Exception.

Q. Do you know who was calling you? A. Well, I——

The Court: The question is do you know?

The Witness: Yes.

Q. Will you stand up and look around this courtroom and tell me if you see in this courtroom the person who telephoned you?

3165

Mr. Maguire: I object to that.

The Court: Sustained. Did you know this person before that time?

The Witness: No, I didn't.

The Court: Had you ever heard his voice before that time?

The Witness: No.

Q. Will you stand, Mr. Perry, and look around this courtroom and tell me if you recognize anyone you know here? A. (Witness stands). Right over there, Eddie Weinheimer.

(A man stood.)

Mr. Ennis: May the record show that the witness identified Eddie Weinheimer and he rose when the witness pointed him out?

The Court: All right.

Q. Was it Eddie Weinheimer who called you on that occasion?

3167

Mr. Maguire: Objected to.

The Court: Sustained.

Q. Have you seen Eddie Weinheimer on numerous occasions? A. Yes, sir.

Q. Did you get to know his voice? A. Yes.

Q. Can you tell us now whether it was Eddie Weinheimer who spoke to you on that occasion?

Mr. Maguire: Objected to.

The Court: Sustained as to form.

Q. Did you recognize the voice of the person who spoke to you on that occasion? A. Did I?

3168

Q. Did you at that time? A. No, I didn't know his voice at that time.

Q. You didn't know his voice at that time? A. No.

Q. Did you thereafter come to know that voice? A. Yes.

Q. From that knowledge can you now tell us whose voice that was? A. Yes.

Q. Whose voice was it? A. Eddie Weinheimer.

Q. Will you tell us what that conversation was?

The Court: Will you fix the date?

Mr. Ennis: About May 1st, I think he said.

The Witness: About May 1st. I was to send him $15.

Q. What did he say? A. They had my truck tied up and they had to have $15, or the price would increase until the money got there; so I wired $15 to the driver.

Q. Who was he? A. Lloyd Fronk, and he gave him the $15.

Mr. Maguire: I move that it be stricken out.

The Court: Strike it out.

Q. Do you remember anything else that was said in that conversation with Eddie Weinheimer? A. Well, he said that he got our truck and he was going to be our union man. 3170

Q. Was that all that was said? A. (No answer.)

Q. Do you remember anything else that was said? A. No, I don't.

Q. When did you next speak to Eddie Weinheimer? A. The 9th day of May I was called. I don't know what week that would be. The 9th was on Monday.

Q. Where did you speak to him? A. In New York, at Hudson Street and 14th.

Q. Hudson Street and 14th? A. Yes.

Q. Where did you meet him? On the street? A. No. At Old New York Freight Forwarding Company. 3171

Q. Who was present at that meeting? A. Mr. Murray, Carl Calkins, the consignee where the freight was to be delivered.

Q. Was there a load of your freight there at that time? A. Yes.

Q. Do you know when it had arrived in New York? A. On Friday.

Q. Do you remember what that freight was? A. Yes, sir.

Q. What was it? A. It was chemicals going to Europe from Niagara Falls.

Q. And when you arrived on Monday was that freight which had arrived on Friday there? A. Yes.

Q. Had it been unloaded? A. No.

Q. What was that conversation with Eddie Weinheimer about that freight? A. Well, the consignee came over and he said, "We have to have this freight unloaded, and there has got to be something done immediately."

The Court: Was Weinheimer there?

The Witness: Yes.

3173 Q. You mentioned a Mr. Murray was present. Who was he? A. He was one of the owners of the Old New York Freight Forwarding Company.

Q. And you mentioned Mr. Calkins; who was he? A. My truck driver.

Q. Your truck driver? A. Yes.

Q. Was that load of freight in his care? A. Yes.

Q. After the consignee said something had to be done about this, what was next said? A. I said, "I can't unload it"; and Murray said, "Well, get together with Weinheimer and see what can be done." So Weinheimer said, "I got my car. So we will go over to the hall."

Q. Who said that? A. Weinheimer.

Q. Did he say what hall? A. 807 hall.

3174 Q. Then what happened? A. We went over. I went over with Weinheimer.

Q. Do you remember where you went? A. Mr. Murray went along.

Q. What place did you go to? A. 807 hall.

Q. Do you know where that was? A. I don't know the street, not the name; no, I don't.

Q. When you arrived at this hall with Eddie Weinheimer and Murray, what was said? A. They asked for Campbell.

Mr. Maguire: I move to strike it out.

The Court: Yes, strike it out. Who is "they"?

The Witness: Weinheimer and Murray.

The Court: Whom did they ask?

The Witness: A man at the window.

Q. At a window at 807? A. Yes.

Q. Did they give any other name but Campbell? A. No, they didn't.

Q. What happened? A. He said he was out of town.

Q. What else was said? A. Well, Weinheimer talked with this man, and the man came out and says, "Here is the paper you will have to sign." And I said, "I am not signing any papers." 3176

Q. Was that man's name mentioned? A. I don't remember whether it was.

Q. Will you stand up and look around the courtroom and tell us if you see that man here? You may step down and look around if you wish. A. That man right over there (indicating).

Q. Where is he sitting? A. Next to that——

Q. What row is he in? A. The last row.

Q. How far is it from your right end? That row. A. Next to the cabinet there (indicating). He has a black necktie. The fleshy man sitting there.

The Court: Next to the hatrack?

The Witness: Yes.

The Court: Call the name. 3177

Mr. Ennis: May the clerk call the name of Joseph Duffy?

The Court: Yes.

The Clerk: Joseph Duffy.

(A man stood up.)

The Court: Is the person who has arisen the one whom you had a conversation with on that occasion?

The Witness: Yes.

3178

Q. What else was said at that conversation in Eddie Weinheimer's presence? A. Well, Mr. Murray said, "I don't see why we should have to sign this contract."

The Court: Who said that?

The Witness: Mr. Murray.

Q. Was there anything said about Mr. Murray signing it? A. Yes. They demanded him to sign it because there was one shipment of his freight on our load and they was going to tie up his place unless he signed 807 at the same time I was to.

3179

The Court: Who said that?

The Witness: Eddie Weinheimer.

Q. What else was said? A. Murray said that he didn't see why we should have to sign this contract and he said, "I am not going to." He said, "What are you going to do with the freight that is on your truck that belongs to me?"

Q. Murray said that? A. Yes. I said, "All right. If I have got to sign it, I will."

Q. Did Eddie Weinheimer say anything else? A. He said, "I will be your man from now on."

Q. Was anything else said about that? A. I just don't remember.

Q. That is all you remember of the conversation? A. Yes.

3180

Q. Did someone sign the contract for the union? A. No.

Q. You are the only one that signed it? A. Yes.

Q. Was there any discussion about someone else signing it?

Mr. Boudin: I object to that. It calls for the witness' conclusion.

The Court: Yes. Sustained.

Q. Was there any conversation along that line? A. Yes, there was.

Q. Will you tell us what was said? A. This man from the hall there said——

The Court: Which man?

The Witness: That I just identified.

The Court: Duffy?

The Witness: Yes. Said that Campbell was not there to sign it and they would see that it was taken care of if we left the papers there.

Q. He said that? A. Yes.

3182

Q. You don't recall anything else that was said on that occasion? A. No, I don't.

Q. Where did you go from the union hall? A. Back there to the Old New York Freight Forwarding where the truck was.

Q. Did Eddie Weinheimer go with you? A. Yes.

Q. What happened over there? A. There was another 807 man there by the name of Hogan.

Q. Hogan? A. Yes.

Q. What happened? A. Eddie Weinheimer told him to take this truck and unload it. He had another truck tied up over in New Jersey with a load of frozen cherries that had been there all day. So Eddie Weinheimer and I went over to New Jersey to unload that. The cherries had been defrosted. They signed bills, subject to inspection the following day.

3183

Mr. Maguire: I move that the latter part be stricken out as not responsive.

The Court: Strike it out.

Q. Whereabouts in New Jersey did you go with Eddie Weinheimer? A. This Merchant Refrigerator.

Q. Whereabouts in New Jersey is that? Do you know the city? A. No, I don't know the city. I rode with him in a car. I don't know.

Q. There was a truck of your merchandise there? A. Yes.

Q. What did you say that load was?

The Court: Frozen cherries.

A. Frozen cherries.

Q. Did Eddie Weinheimer help unload? A. Yes.

The Court: He has already testified to that.

3185 Mr. Ennis: There is one item of proof I would like to bring out, your Honor.

The Court: Bring it out.

Q. Were there any discussions about the condition of those cherries in Eddie Weinheimer's presence?

Mr. Maguire: Objected to.

The Court: Overruled.

Mr. Maguire: Exception.

The Court: Yes or no.

A. Yes.

The Court: Who was present?

3186 The Witness: Carl Calkins, Lloyd Fronk, Eddie Weinheimer, the receiving clerk and myself.

Q. What was that conversation?

Mr. Maguire: Objected to.

The Court: Overruled.

Mr. Maguire: Exception.

A. He said, "The boss, I don't know how he is going to accept this. He is gone."

Q. Who said that? A. The receiving clerk, but he said, "I will sign the bill subject to inspection."

Q. Was there anything else said about the cherries? A. No.

Q. Do you know how long that truckload of frozen cherries had been standing there? A. Yes.

Q. How long? A. I rode in on it. It was 2 o'clock in the morning when we got in.

The Court: What day?

The Witness: That same day.

3188

Q. Two o'clock in the morning? A. Yes.

Q. What time did you get there? A. Well, I don't remember when; the first thing in the morning.

Q. What time did you get over there with Eddie Weinheimer? A. That was in the afternoon.

Q. Did you notice when you got over there whether the cherries were frozen? A. Yes, I did.

Q. Well, were they or weren't they? A. No.

Q. They weren't? A. No.

Q. And they were taken subject to inspection? A. Yes.

Q. Did you ever have another load of frozen fruit for the Merchant Refrigerator? A. Yes. The balance of that shipment came in the next day.

Q. Up to that time had you had a number of loads for 3189
the Merchant Refrigerator? A. I couldn't say just—there was some, yes.

Q. Did you ever have another load for Merchant Refrigerator? A. No.

Q. Did you ever have any discussion about that? Any conversation with Eddie Weinheimer about that? A. Yes, I did.

Q. When? A. Well, there was a time after that I met him in Buffalo.

The Court: How long after, approximately?

The Witness: Oh, I would say probably a month and a half or two months.

Q. What was said? A. I told him about me losing an account. He said, "If you had paid your fees you wouldn't —it wouldn't have happened."

Q. On that day when Eddie Weinheimer did unload did you pay him any money for the unloading? A. Yes.

Q. How much? A. I paid him $9.42, and the other fellow $9.42, Hogan.

Q. Did Hogan help on the Jersey load or on the load in New York? A. He helped on the load in New York.

3191

Q. You paid each one of them $9.42? A. Yes.

Q. Were you given a copy of that contract, so-called, in the union hall? A. No.

Q. And you were the only one who signed it? A. Yes.

Q. Do you recall after that occasion when you next saw Eddie Weinheimer? A. I would say that it was a month or a month and a half after that.

Q. After that first meeting? A. Yes.

Q. Do your recall the conversation on that occasion?

The Court: Excuse me. I want to be clear about this. He has identified a conversation he had with the defendant Weinheimer in Buffalo a month, a month and a half or two months later. Is that the

3192

same time you are now inquiring about?

Mr. Ennis: Yes.

The Court: That happened a month and a half later?

Mr. Ennis: Yes, your Honor.

The Court: All right. I wanted to be sure we were both talking about the same thing. Proceed.

Q. You had a conversation with him? A. Yes.

Q. On that occasion? A. Yes.

Q. Do you recall that conversation?

The Court: Well, he has already told us part of it at least.

A. Well, I just don't remember everything that was said.

The Court: Well, do you recall anything in addition to what you have already told us?

The Witness: No, I don't.

Q. Did you ever have any conversation with Eddie Weinheimer about what Local 807 men would work on your truck? 3194

Mr. Bondin: I object unless the time is specified.

The Court: I will allow him to answer yes or no. If he never had any such conversation it do sn't make any difference. and if he did have such conversation we can find it out when and where it took place.

Q. (Read.) A. The only conversation——

The Court: No. Did you ever have any? Yes or no.

The Witness: Yes.

Q. When? A. That was the time at the hall. 3195

Q. At the hall? A. Yes.

Q. When the same people were present whom you testified about? A. Yes.

Q. What was said about who should work on your trucks? A. He said that he was going to work on the trucks, that he got the trucks first and he was going to be the man for it.

Q. Did you talk about other men working on the trucks? A. No.

Q. After this conversation in the hall did you ever select any of the Local 807 men to work on your trucks? A. No.

Q. Do you know who did select them? A. Yes.

Q. Who did? A. Eddie Weinheimer.

Q. Do you recall a conversation with Eddie Weinheimer, a different conversation with Eddie Weinheimer, about a load of merchandise in New York City for the William Young Transportation Company? A. Yes.

Q. When did that take place? A. The latter part of October, 1938.

3197 Q. Where did it take place? A. At William Young——

The Court: When was this?

Mr. Ennis: October of 1938.

The Witness: At William——

The Court: One moment. October, 1938?

Mr. Ennis: That is right, your Honor.

The Court: All right.

Mr. Murray: I object, if your Honor please, on the ground that it is outside the issue.

The Court: How is that competent?

Mr. Ennis: Well, if the Court please, I think with the foundation that has been laid on this witness' testimony, we are entitled to show conversations and similar occurrences after the date of the

3198 indictment. We have a memorandum to that effect.

The Court: I would like to look at it.

(Mr. Ennis hand memorandum to Court.)

The Court: Is this a conversation with Weinheimer?

Mr. Ennis: Eddie Weinheimer.

The Court: At Young's in October, 1938? All right.

Q. Where did that conversation take place? A. Over the telephone.

Q. Where were you at the time? A. At Buffalo in my office.

Q. What was said?

Mr. Boudin: Objected to.

The Court: Sustained.

Q. Where was this shipment involving the William Young Transportation Company going from and to? A. It was going from William Young, Niagara Falls, to New York City. I don't know the address of the place where the shipment was going. 3200

Q. Have you any idea what part of New York City? A. No, I haven't.

Q. Was this shipment going in your truck? A. Yes.

Q. Can you fix the time of this shipment? A. No, I can't.

Q. Well, can you tell us what year it was? A. Well, 1938, in October; the latter part of October.

Q. The shipment, as well as the conversation, was in the latter part of October? A. Yes.

Q. In 1938? A. Yes.

Q. Did you call Eddie Weinheimer or did he phone you? A. He phoned me.

Q. What was said in the conversation? 3201

Mr. Boudin: Objected to. That is what your Honor, I think, ruled out.

The Court: Sustained.

Q. For the moment leaving that conversation, Mr. Perry, did you ever have a conversation with Eddie Weinheimer about a sum of money which was coming to you from the Dickerson Freight Forwarding? A. Yes.

Q. Where did you have that conversation? A. That was over the telephone.

Q. Where were you at the time? A. Buffalo.

Q. Did you call Weinheimer or did he call you? A. He called me.

Q. Can you tell us the time of that conversation? A. Yes. It was one or two days after the first—after that other conversation there about the load.

Q. Was that a collect telephone call?

Mr. Boudin: I object to that.

The Court: Sustained.

3203 A. Yes.

The Court: Strike out the answer.

Q. Did you pay for that call? A. Yes.

Mr. Boudin: I object to that.

The Court: Sustained. Strike out the answer.

Q. Are you still in the trucking business, Mr. Perry? A. No.

Q. When did you go out of the trucking business?

Mr. Boudin: I object to that as immaterial.

The Court: I will allow it.

3204 Mr. Boudin: Exception.

A. I was forced——

The Court: No, no. The question was when you went out of the business. Just tell us the date.

The Witness: December 15, 1939.

Q. Did you sell your business?

Mr. Boudin: I object to that.

A. No.

The Court: Sustained.

Mr. Ennis: If the Court please, there is no further testimony from this witness within the indictment period, and if we might, we would like to talk to the Court about that in the morning.

The Court: Well, we will take a recess now. It is 4.30. We will adjourn until 10.30 in the morning, ladies and gentlemen. 3206

(The jury left the court room.)

The Court: I will hear you, then, at 10.10 in the morning.

(Adjourned to April 26, 1940, at 10.10 A. M.)

New York, April 26, 1940,
10.10 A. M.

TRIAL RESUMED.

(Conference in chambers during which Mr. Cahill, Mr. Marks, Mr. Ennis and Mr. Boudin addressed the Court.)

The Court: The way the matter impresses me is that 3207
Mr. Perry, who is now on the stand, is the 24th witness in this case, and by the preceding 23 witnesses 17 defendants have been brought into this case by specific identification, and yet the question has not been raised before as to the necessity of examining any one of those 23 witnesses excluding Mr. Boyle, who is not of that class of witnesses, to show what it is proposed to show by Mr. Perry.

Now I do not know, and it is not necessary for the prosecution to state, whether at some time or other they intend to bring back any of those other 22 witnesses to prove similar occurrences after the date of the filing of the indictment; but since the question has only been raised with respect to Mr. Perry, until it appears that it will be a physical impossibility to call other witnesses to connect up any of the remaining defendants not identified, I don't think the Court would be justified at this time in allowing this testimony while Mr. Perry is on the stand simply because of the inconvenience of calling him back here at a later dat

3209 (The following proceedings were had in the court room, 10.30 A. M., in the presence of the jury:)

Mr. Marks: Shall I proceed, your Honor?

The Court: We are waiting for one of the defendants.

The Clerk: All present now, your Honor.

The Court: All right, proceed.

CASSIUS C. PERRY resumed the stand and further testified as follows:

Mr. Marks: May we have the defendant Joseph Duffy stand?

The Court: Yes.

3210 (A man stood.)

Direct examination (continued) by Mr. Marks.

Q. Mr. Perry, will you stand up and look at Mr. Duffy who is now standing? A. (Witness stands.)

Q. Do you remember you picked him out yesterday as the man you spoke to in union headquarters? A. Yes.

Q. At the beginning of May? A. Yes.

Q. As you look at him now will you say he is the man or he is not? A. I seen him somewhere. I couldn't say whether it was there or some other place. I have seen the man some place.

Q. In other words, you are not sure that he is the man you spoke to on that occasion? A. No, I am not.

Q. All right, thank you. Will you look around the court room, Mr. Perry, and tell us if you do see the man whom you spoke to in union headquarters on that occasion? A. (Standing) Well——

Q. You can step down and look around the court room. A. I would not say that I could pick anyone there and be definite there that it was the man over there that day. 3212

Mr. Marks: May I have the answer read, your Honor?

The Court: Yes.

(Answer read.)

Q. In other words, you are not sure you can recognize him to-day? A. No, I don't.

Mr. Marks: All right, thank you. That is all.

Cross-examination by Mr. Murray.

Q. Mr. Perry, were the relations between you and Weinheimer friendly while he was working for you? A. At times they were. 3213

Q. Well, did you and your wife visit his home in New York? A. Yes, we did.

Q. Did they visit your home in Buffalo? A. Yes.

Q. Did your family entertain Weinheimer's family? A. They was at our place.

Q. They were where? A. They was at our place.

The Court: You will have to speak a little louder, Mr. Perry. I could not hear that answer.

The Witness: They was at our place.

Q. Did Weinheimer's family entertain you and your family in his home? A. Yes.

Q. Now, when was it that you first spoke to Weinheimer if you recollect? A. Around the 1st of May, 1938.

Q. Do you know, say, before the 1st of June how many payments you made to Weinheimer? A. No, I don't.

Q. Did you pay him $100 for the entire month? A. I could not say how much was paid to him.

Q. Did you make any records in your office in Buffalo?
3215 A. We did.

Q. Have you still got those records? A. No.

Q. Do you know what became of them? A. Yes.

Q. What? A. We had a fire.

Q. When did you have the fire? A. The 29th of February, I believe, 1938.

Q. Well, did this fire occur before or after you went out of business? A. Before.

Q. Before? A. Yes.

Q. And were all the records destroyed? A. Not entirely all of them. There was two wooden files that was destroyed. There was one steel file still where we kept quite a lot of things.

Q. Well, was there a correspondence back and forth be-
3216 tween you and Weinheimer up to the 1st of June of 1938, do you recollect? A. What was the correspondence you say?

Q. Was there correspondence back and forth between you and Weinheimer? A. Yes.

Q. Up to June 1st of 1938? A. Yes.

Q. You have no record of that now, have you? A. No.

Q. Was that correspondence friendly? A. No, over the telephones at times——

Q. No, I am talking——

The Court: No, no, you do not conduct correspondence over the telephone. He is asking you now about the interchange of letters or other written communications.

The Witness: Well, I could not answer to that.

The Court: He wants to know whether the communications were all of a friendly character or unfriendly character, if you remember.

The Witness: It was unfriendly.

Q. Unfriendly? A. Yes.

Q. Was all the correspondence you had with Weinheimer unfriendly? A. No. 3218

Q. Was this correspondence passing back and forth between you and Weinheimer about the time that you were entertaining Weinheimer and his wife in your home in Buffalo, was this friendly? A. May I ask——

Q. Yes. Was the correspondence unfriendly?

The Court: I think the stenographer should repeat the question.

(Question read.)

Mr. Ennis: If the Court please, may it be made clear whether it is the correspondence only up to May 1, 1938?

The Court: I take it it is up to June 1st; I so understood it. 3219

Mr. Murray: Yes, your Honor, I have in my prior question, I think, established the date as of June 1, 1938.

The Court: Do you understand the question?

The Witness: Well, I don't remember what month or what time it was that he was at our place.

Q. Well, did you and Weinheimer before June 1, 1938, have talks in which you requested him to endeavor to get for you business whereby your trucks would cart merchandise back to Buffalo? A. Yes.

Q. Did he get you such business? A. Well, there is two ways I can answer that. One way, he got some business from a different trucking concern but not soliciting for our own company.

Q. Well, Mr. Perry, did you ask him to try to contact concerns in New York— A. Yes.

Q. —whereby when your trucks made deliveries in New York they would get loads from other concerns to return
3221 to Buffalo? A. Yes, I did.

Q. And did Weinheimer accomplish that for you? A. Honestly I wouldn't know whether he got any accounts or not for us.

Q. You dropped your voice.

The Court: We will have the answer repeated. Please keep your voice up, otherwise the stenographer must repeat your answer and it takes twice as much time.

The Witness: Yes.

Q. Well, do you know whether or not he did endeavor to get accounts for you? A. Well, I asked him to; I don't know.

3222 Q. And your present recollection is that you can't say now whether or not he succeeded in getting those accounts; is that it? A. Yes.

Q. Well now, for that service, that is, the service of his attempting to get you new accounts did he charge you anything for that service? A. No.

Q. Did he ask for any compensation for it? A. I don't know if he did.

Q. Did you ever for anything he did pay him anything beyond the union wages that were fixed for the service and the hours of service?

Mr. Cahill: If your Honor please, again may I ask is the time being limited throughout to June 1, 1938?

Mr. Murray: I thought I had made that definite, that it was up to June 1, 1938.

Mr. Cahill: If your Honor please, I understood the question to have the word "ever" in it.

Mr. Murray: Well, I submit, your Honor, that includes up to June 1.

3224

The Court: No. That might go beyond June 1.

Mr. Murray: All right, your Honor. I withdraw the question.

Q. Up to June 1, 1938, did you ever pay Weinheimer any additional money beyond what you paid him for his services according to union wages? A. If you figure what he charged for unloading a truck more than what the $9.42 would have been, there was a lot of occasions that he got extra pay that way.

Q. Well, can you tell me any occasion up to June 1, 1938, where you gave Weinheimer compensation in addition to what the charges were according to union wages for services rendered by Weinheimer? A. No. I don't know.

3225

Mr. Murray: Will you stand up, Mr. Duffy?

(A man stood up.)

Q. Will you look at that gentlemen, if you please. A. Yes.

Mr. Murray: You may be seated (addressing man who stood up).

Q. Mr. Perry, have you any present recollection now of ever having seen the defendant Duffy, who has just stood up, before you saw him in this court room yesterday? A. Yes, I seen the man some place.

Q. Do you know where you saw him? A. No, I couldn't say where I saw him.

Q. Did he ever do any work for you? A. No.

Q. Did you ever pay him any money? A. No, no.

Q. Did he ever ask you for any money? A. No.

Q. Did he ever represent that he was an official of the union? A. No.

3227 Mr. Murray: That is all.

Mr. Ennis: No further examination.

The Court: Any further cross-examination by other counsel?

Mr. Boudin: No.

Mr. Ennis: No further redirect.

(Witness excused.)

The Court: Next witness.

Mr. Cahill: Your Honor, may we have a reservation of the right to recall him in the light of the ruling as to limitation of dates in the event we think it proper?

The Court: Yes. As long as you brought that up I will say in the presence of the jury now that I had a conference with all counsel this morning and that
3228 I ruled it was not proper at this time to interrogate this witness with respect to acts occurring after the date of the filing of the indictments in this case, but without prejudice to your bringing the matter up at a later time, and you now, of course, may have it understood that this witness may be recalled for that purpose. I take it that is the purpose?

Mr. Cahill: That is the purpose, your Honor, yes.

FLOYD E. FRONK, residing at 208 Bates Avenue, Buffalo, New York, called as a witness on behalf of the government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Fronk, will you keep your voice up so we can all hear you. Where are you employed? A. Stibbs Transportation.

Q. Where were you employed in 1937? A. Perry's Express.

Q. Do you remember when you went to work for Perry's Express? A. The 4th of April, 1937.

Q. Up to when did you work for Perry's Express? A. 3230
Up to October, 1939.

Q. You worked as an over-the-road driver? A. Yes, that is right.

Q. Between what points did you haul in 1937 and up to June 1, 1938? A. New York and New Jersey.

Q. Perry's Express has its main office in Buffalo? A. That is right.

Q. In 1937 were you a member of any labor union? A. 294 in Albany, A. F. of L.

Q. That is the International Brotherhood of Teamsters? A. Yes, sir.

Q. When did you join that union? A. April 4, 1937.

Q. The same day you went to work for Perry? A. Yes.

3231

The Court: Where did you say that local was located?

The Witness: Albany, New York.

Q. Do you know anyone named Edward Weinheimer? A. Yes, I do.

Q. Will you stand up, Mr. Fronk, and see if you can find him in this courtroom. ? A. (Witness stands.)

Q. You may step down if you wish. A. Right over there (indicating).

Q. Which row? A. Back row, the fourth man from the end.

Q. The fourth man from where? A. The fourth man from the end.

Q. Which end? A. That end (indicating).

The Court: Indicating the end furthest from the bench.

Q. What color suit has he on? A. Blue, from here.

3233 Mr. Marks: May the clerk call the name of Edward Weinheimer?

The Court: Yes.

The Clerk: Edward Weinheimer.

(A man stood up.)

The Witness: That is the gentleman.

Q. Do you remember when you first saw Edward Weinheimer? A. It was around in May of 1938.

Q. Do you know what part of May? A. Around the 1st of May.

Q. Where was it? A. In Brooklyn.

Q. Did you have a truckload of merchandise in New York at that time? A. Yes, I did.

3234 Q. Do you remember what was on your truck? A. Batteries.

Q. Had you already delivered part of your load before you saw him that day? A. Yes, I did.

Q. Where? A. Up on First Avenue, Bush Terminal, and Bedford Avenue.

Q. Where was it you saw him? A. On Atlantic Avenue.

Q. About how much of your load was remaining in your truck at the time you saw him? A. About half.

Q. Did you have a conversation with him? A. Yes.

Q. Was he alone? A. No, there was another gentleman with him.

Q. Do you know who the other gentleman was? A. No, I couldn't say.

Q. Did you see him in this courtroom when you stood up before? A. No.

Q. Would you recognize him if you saw him today? A. No, I don't believe I would.

Q. Now, what was the conversation? A. Why, he told me that I would have to have a City man in order to unload the rest of my load. That I would have to have a local man here in the City. I couldn't unload unless I did have.

Q. What did you say? A. I couldn't unload unless I did 3236
have. I said, "Why should—I belong to the union myself. Why can't I unload my own load?"

Q. What did he say? A. He said no, I would have to have a City man. I said, "I will take the truck out." He said, "That won't do you any good."

Q. He said what? A. It wouldn't do me any good. I still had to have a City man.

Q. Did you say anything after that? A. Yes. I said, "Well, if I can't—have to have a City man, I might just as well let you unload it."

Q. What did he say? A. He said, "All right. You will have to pay me $9.42."

Q. What time of the day was that, Mr. Fronk? A. Around 4 o'clock in the afternoon.

Q. Did you do anything after he told you you would have 3237
to pay $9.42? A. Yes, I said I would have to send a wire to Buffalo.

Q. Did you send a wire to Buffalo? A. Yes, I did.

Q. Now, can you recall any further part of that conversation? A. Well, he worked about, till 5.15 or 5.30 finishing the unloading.

Q. And was the entire truck unloaded by 5.15 or 5.30? A. That is right.

Q. Now, did you work on the truck too? A. No, I didn't help after he started to unload.

Q. Did you have any conversation around 5.15 or 5.30? A. Yes. I was waiting for the wire and we had a conversation, and I got a wire from—back about 6.30. I was supposed to get a man from Dickerson Freight Forwarding

Q. What did you say to Weinheimer at that time? A. I told him and he said, "Well, it wouldn't do you any good because I am going to take care of the truck."

Q. Now, was there anything further said then? A. No, not at that time.

Q. Beg pardon? A. Not at that time.

3239 Q. Do you remember a telephone call at about that time? A. No, There was a telephone call about 9 o'clock.

Q. Did you have any further conversation with Weinheimer between the conversation you just told us about and the telephone call at about 9 o'clock? A. No. Only he asked me if the money had came yet.

Q. How much money did he ask you for? A. He asked me for at that time—the bill was $15; that is what I owed him at that time.

Q. Did he say what the $15 was for? A. For overtime, waiting for the money.

Q. Did you say anything to that? A. I asked him why he charged me so much money.

Q. What did he say? A. He said for overtime, for waiting, running around, cheating down here.

3240 Q. Running around what? A. Cheating.

Q. What else was said on that subject? A. That was all was said at the time.

Q. Now, in that telephone conversation which you had at about nine, whom did you talk to? A. I talked to Mr. Perry.

Q. Did Weinheimer do any talking? A. Yes, he did.

Q. Did you hear him talk? A. Yes.

Q. What did you hear him say? A. He asked Mr. Perry why he was running around down here, why he didn't send the money down, the bill was $15. He said he didn't have the money and asked him why he charged us so much money. I heard him say he would send the money down.

Q. Did you hear him say anything else? A. No. That is all.

Q. Did the money come down? A. About 11 o'clock I got $15.

Q. At Western Union? A. Yes.

The Court: 11 o'clock when?

The Witness: In the evening.

3242

Q. Did you give any money to Weinheimer? A. I gave him the $15.

Q. What did he say then? A. He said I still owed him $3; the bill was $18.

Q. Did he say what the $3 extra was for? A. For overtime, waiting for the money until 11 o'clock.

Q. That is, between 9 and 11? A. Yes, that is right.

Q. Did he say on what basis he was computing the overtime? A. $1.77 an hour.

Q. Did you ask him what that figure represented? A. No.

Q. What did you say to him when he told you that you owed him $3 more? A. I said, "I haven't got it."

Q. What did he say? A. He took the bills and told me— 3243

Q. He took what? A. He took my bills.

Q. That is, your bills of lading? A. Yes.

Q. What did he say? A. He said, "You come over to 19th Street in the morning and you can have your bills if you give me $3.

Q. Now, did you see him the next morning? A. Yes.

Q. Did you see anyone else? A. This other fellow John.

Q. Do you see him in court? A. Yes.

Q. Where is he? A. Right over there, second from the end, last row.

Q. Second from your right hand? A. Yes.

Mr. Marks: May the clerk call the name of John Weinheimer?

The Clerk: John Weinheimer.

(A man stood up.)

Q. Is that the man, now standing? A. That is the gentleman.

Q. Did you see Eddie Weinheimer the next morning? A. Yes.

3245 Q. Were he and his brother together when you saw them? A. His brother was across the street and Eddie was in his car.

Q. Beg pardon? A. His brother was across the street from Eddie. Eddie was in his automobile.

Q. Do you know for what company John Weinheimer worked at that time? A. Young's from Niagara Falls.

Q. Now, did you have any conversation the following morning with either John or Eddie? A. Eddie called Johnny over and he told Johnny about it. He said he still has my bills and Johnny told me I still owed Eddie $3. Johnny said, "Well, give him back his bills and leave him go." I went.

Q. He did give you back your bills? A. Yes.

3246 Q. Then you left? A. That is right.

The Court: Excuse me. Do I understand that John called Edward or Edward called John? Which was it?

The Witness: Edward called John.

Mr. Cahill: Your Honor, will you ask this young man to please keep his voice up?

The Court: You will have to speak a little louder, Mr. Fronk. I don't hear you distinctly and I am

nearer to you than anyone else. I imagine the jury are having difficulty and counsel are having difficulty hearing what you say. Try to raise your voice a little.

Q. Did you pick up any merchandise that same day? A. I picked up a load of beer at Piel's Brewery.

Q. Did you load that yourself? A. They loaded it over on the platform. I helped load it.

Q. Was Eddie Weinheimer present when you loaded or when it was loaded? A. No.

Q. Then you drove back to Buffalo? A. That is right.

Q. When did you next see Edward Weinheimer? A. About a week later. 3248

Q. That would be about what date? Can you remember? A. About the 9th or 10th of the month.

Q. Where did you see him? A. I seen him in the Merchant's Refrigerator in New Jersey, Jersey City.

Q. You had a truck load of merchandise there? A. Yes.

Q. What did you have on your truck? A. Frozen blackberries.

Q. Were there any other trucks of Perry's Express in that vicinity that day? A. Not that I know of.

Q. Do you know whether there were any in New York City that day? A. Yes, there was one over here tied up, I think.

Mr. Murray: I regret to say, your Honor, that I can't hear a word this witness says. I don't like to ask that the answers be read all the time. 3249

The Court: Well, I can only ask the witness to speak louder, but if you don't want to hear the answers read, I won't take time to have them read, but I will have them read if you can't hear.

Mr. Murray: I hesitate to make the observation, but it appears that he has been chewing gum and perhaps that has something to do with his enunciation.

The Court: Have you gum in your mouth?

The Witness: Yes.

The Court: Well, will you remove it?

Q. Now try to keep your voice up, Mr. Fronk, so all of these ladies and gentlemen can hear you. About what time of the day did you see Weinheimer in Jersey City? A. Around 5 o'clock in the evening.

3251 Q. You hadn't seen him earlier that day, had you? A. No, I hadn't.

Q. Was anyone with him when you saw him? A. Mr. Perry.

Q. Anyone else? A. That is all I can remember.

Q. What was the conversation at that time? A. He came over to unload the truck.

Q. Do you remember what was said? A. Mr. Perry told me——

The Court: No. Was Weinheimer present?

The Witness: Mr. Weinheimer was present.

Q. What did Perry tell you in Weinheimer's presence? A. We had to sign a contract over in New York with 807.

3252 Q. Anything else? A. That was all.

Q. Was your truck unloaded at that time? A. No, it was not unloaded then.

Q. When was it unloaded? A. About an hour afterwards.

Q. Do you know what condition the blackberries were in at the time the barrels were unloaded? A. The barrels were defrosted, and they took the cover off one of the barrels and there was—there wasn't enough frost on the blackberries; they wasn't frozen; they was soft.

Mr. Murray: I didn't hear that.

The Court: What was the answer?

The Witness: The barrels was defrosted. They took the cover off of one of the barrels, and the blackberries inside was soft.

Q. Had you ever delivered frozen berries or any other frozen fruit to the Merchants Refrigerator before that? A. Yes.

Q. Did you ever deliver another load to the Merchants Refrigerator after that? A. No.

Q. Do you remember whether you again saw or spoke to Edward Weinheimer up to June 1, 1938? A. I seen him a couple of times here in the City. 3254

Q. Up to June 1st? A. Yes.

Q. Now, do you remember the next time you saw him after this occasion in Jersey City? A. I have brought loads down here, and there has been a City man down here; he has been up at 33rd and Tenth Avenue, a gas station.

Q. Beg pardon? A. I met him up at 33rd and Tenth Avenue, a gas station.

Q. And did he ever do any work on your truck? A. Yes.

Q. And it is on those occasions that you saw him? A. That is right.

Q. How long did it take to unload your truck on those occasions? A. Well, sometimes it took all day; sometimes it took a half a day. 3255

Mr. Marks: That is all.

Cross-examination by Mr. Murray.

Q. On this first occasion about May 1st, when you say you met Weinheimer, did you have a helper on your truck? A. No.

Q. What ton truck was it? A. 2½-ton tractor and trailer.

Q. And do you know the tonnage of the merchandise that you were trucking from Buffalo to New York? A. It was about 5 ton of freight on the truck.

Q. What time did you leave Buffalo? A. I left Buffalo around 7 o'clock in the morning.

Q. What time did you reach New York? A. I reached New York two days afterwards, around 8 o'clock.

Q. In the morning? A. That is right.

Q. How many miles was it from Buffalo to New York? A. About 450 miles.

3257 Q. Did you sleep any place after you left Buffalo on your trip to New York and before you reached New York? A. Well, I stopped in Albany.

Q. Did you stop in Albany on that occasion? A. Always stopped in Albany to rest, because I have relations there.

Q. Did you say because you had relations there? A. That is right, always stopped and visited with them. Sometimes stayed overnight.

Q. Now, on these occasions up to June 1st when you say Weinheimer helped you to unload, were there occasions when it took more than 8 hours to unload? A. No.

Q. Well, I understood you to tell the District Attorney that sometimes it took all day. A. Well, 8 hours is a day, from 8 in the morning until 5 in the afternoon.

3258 Q. Well, were there occasions when Weinheimer helped you to unload that it did take 8 hours? A. Only the first time.

Q. Well, when was the first time that he did help you to unload? A. When he stopped me over in Brooklyn.

Q. And how many hours did that take to unload on that occasion? A. Well, he charged me for after 5 o'clock, charged me $1.77 for overtime.

Q. How many trips did you ordinarily make to New York from May 1st to June 1st of 1938, or, rather, what average number of trips did you make a week? A. I made about five trips in a month.

Q. I see. Now, when you came to New York did you always pick up merchandise to return to Buffalo? A. That is right.

Q. And did you always pick up merchandise from Piel's Brewery to take back to Buffalo? A. Not always; most of the time.

Q. Where else did you pick up loads to return to Buffalo? A. Rockwood's Chocolate.

Q. Now, when you carted those cherries that you said 3260
became defrosted, did you have a refrigerated truck? A. Semi-refrigerated.

Q. And by "semi", what do you mean? A. Lined on the inside.

Q. Lined with dry ice? A. Lined with ply-board on the inside.

Q. Did you have any dry ice on the truck? A. I had dry and wet ice, both.

Q. On the inside of your truck? A. That is right, on top of the merchandise.

Q. Now, were these cherries, you say, that were defrosted, or were they berries? A. It was berries that was defrosted.

Q. Did you have cherries on the truck also? A. No.

Q. Just blackberries? A. Yes, sir, that is all. 3261

Q. And how were those blackberries parceled, in barrels or in boxes or crates, or what? A. In wooden barrels.

Q. Did you have any dry ice on the barrels? A. Had dry ice on top of the barrels, and wet ice on them, too.

Q. Say at 9 o'clock at night did you still have the dry ice on the barrels? A. 9 o'clock—well, when we used to stop in Albany—stop in Syracuse and put ice on the merchandise.

Q. I am addressing myself to May 1st when you say, as I recollect it, that Weinheimer was with you in Brooklyn about 9 o'clock at night—is that correct? A. 9 o'clock in the evening?

Q. Yes. A. We had a load of batteries that day; it wasn't blackberries.

Q. On what occasion was it or on what date was it that you had the berries that you saw were defrosted? A. About the 10th of May.

Q. It was a week after the first occasion on which you had met Weinheimer; is that correct? A. That is right.

Q. Now, on that trip from Buffalo with your berries, did
3263 your truck break down in Albany? A. That is right.

Q. And were you delayed in your trip to New York? A. About four hours.

Q. Wasn't it longer than that? A. No.

Q. Wasn't it longer than four hours? A. Not that I can recall. We only broke wheel studs, and that doesn't take long to fix.

Mr. Murray: May I have the answer read?
The Court: Read it.
(Answer read.)

Q. Wasn't it the delay in Albany that caused defrostation of your berries? A. No, because I put ice on the truck in Albany.

3264 Q. Now, on your return trip after May 1st was that the occasion when you picked up beer in Brooklyn? A. I always picked up beer in Brooklyn.

Q. Well, we are talking now about your return trip on May 2nd back to Buffalo? A. That is right; I picked up a load of beer.

Q. Do you know how many tons of beer you carted back on that occasion? A. Possibly 10, 12 ton.

Mr. Murray: That is all.

The Court: Any further cross-examination by any other defendants?

(No response.)

Mr. Marks: No further questions.

(Witness excused.)

ROY JOHN AUSTIN, residing at 1120 Flanders Place, Rochester, New York, called as a witness in behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks. 3266

Q. Mr. Austin, where are you employed now? A. Jodomar, Inc., in Rochester.

Q. Did you ever work for Perry's Express? A. I did.

Q. When did you go to work for Perry? A. February, 1936.

Q. And how long did you work for him? A. Oh, a little better than three years.

Q. Did you use to haul between Buffalo and New York City? A. I did.

Q. Do you know Edward Weinheimer? A. I do.

Q. Did you see him here in court? Will you stand up and look around? A. (Standing) Yes.

Q. Where is he? A. In the back row. 3267

Q. Which one? A. Second from the end, I think.

Q. Do you know John Weinheimer?

Mr. Murray: I object now, if your Honor please, until this identification is complete.

The Court: I will allow him to say if he knows the one inquired about.

Mr. Murray: Exception.

A. I have seen him on several occasions.

Q. Do you see him in court? A. No.

Q. Will you step down and look around? A. (Stepping down) I can't see him.

Mr. Marks: May we have the man in the last row, the second from the right, rise, your Honor?

The Court: Yes.

(A man stood.)

Q. Do you know his name? A. I think I was wrong. I think that is Johnnie.

Q. You think that is Johnnie? A. Yes.

3269

Mr. Marks: Now, if your Honor please, may we have the man in the last row, the fourth one from the left, rise?

The Court: Yes.

(A man rose.)

The Witness: I see him now.

Q. Do you see that man? A. Yes, I do.

Q. What is his name? A. Ed Weinheimer.

Q. Do you remember which one of the two Weinheimers you met first? A. Eddie.

Q. When did you first meet him? A. It was around the first of May.

3270 Q. Do you remember more particularly what part of May? A. No, I couldn't say just the day.

Q. Where was it?

The Court: What year?

Mr. Marks: Oh, I beg your pardon.

Q. What year? A. 1937.

Q. 1937? A. 1938.

Q. Do you remember where? A. I don't recall right now where it was.

Q. Did you have a truckload of merchandise in New York? A. Yes, I did.

Q. Do you remember what you had on your truck? A. Oh, I didn't have a load; I was empty.

Q. Had you already delivered a load? A. Yes.

Q. And what were you going to do with your truck in New York that day? A. I was pulling out, going to Albany.

Q. You were pulling out empty? A. Yes.

Q. To make a pickup in Albany? A. Yes.

Q. Do you remember what part of the day you saw Edward Weinheimer? A. I don't recall the time of the day, no. 3272

Q. Who was present when you saw him? A. Well, I am sure a fellow by the name of Hogan.

Q. Do you know who Hogan was? A. Well, that was the only time that I ever seen him, that day.

Q. Have you seen him since? A. No, I can't say that I did.

Q. Who else was present, do you know? A. I think Harry Winters.

Q. Do you know who Harry Winters was? A. Yes.

Q. Who is he?

Mr. Murray: I object, if your Honor please.

The Court: Overruled. 3273

Mr. Murray: Exception.

A. I later found out that he was a second man for Weinheimer.

Mr. Murray: I move to strike out the answer.

The Court: Strike that out.

Q. Do you remember whether you saw those three that time on the street or in any building? A. I didn't see him in any building.

Q. Was it on the street? A. On the street.

Q. What were you doing on the street? A. I had been over to the Autocar Truck Company for some service; I was pulling away, and they stopped me.

Q. Do you remember what street your truck was on? A. Either 24th or 25th Street.

Q. Do you know the avenue? A. Tenth Avenue, between Tenth and Eleventh Avenue.

Q. Were you driving out of the City? A. I was going
3275 around the block to, back up to Tenth Avenue to a gas station at the time?

Q. What did they do? A. Weinheimer said Perry owed him some money and I couldn't leave until they got it. They stopped me, in other words.

Mr. Boudin: If your Honor please, I move to strike it out as being a conclusion of the witness, and I would also like the witness instructed to raise his voice so that we can hear him.

The Court: Motion to strike out denied; request that the witness raise his voice granted. Now, raise your voice.

By the Court.

3276

Q. You go to ball games once in a while, don't you? A. I do.

Q. You don't keep quiet during the game, do you? A. No.

The Court: All right, raise your voice so that the last juror over there can hear what you say.

The Witness: All right.

By Mr. Marks.

Q. Where were they when you first saw them? A. In Weinheimer's car.

Q. And where was his car? A. They stopped me; got out of his car and stopped me.

Q. Were you driving in your truck? A. Yes.

Q. In motion? A. Yes.

Q. And where was his car in respect to your truck? A. Well, I suppose parked.

Q. Where? A. On 25th Street. To get out they had to stop.

Q. Well, when you first saw his car was it in motion or was it stopped? A. When I actually saw the car they 3278
pulled in behind the truck on Tenth Avenue.

Q. Did they talk to you from the car? A. No.

Q. How did they stop you? A. They stepped on the truck and asked me where I was going.

Q. Who stepped on the truck? A. Hogan first.

Mr. Boudin: If your Honor please, may it appear that these conversations with individual defendants are taken subject to objection of the defense and exception and under the limitations already stated by your Honor?

The Court: Yes.

Mr. Boudin: I would not like to object each time, I have not done so, but I would like it clearly under- 3279
stood.

The Court: Well, these conversations are all taken subject to the general statement that I made to the jury so that they would understand the circumstances; and I will say now for your benefit and for the benefit of the jury that at the conclusion of this case the Court will endeavor to give very clear, explicit instructions with respect to the circum-

stances under which testimony so given may be construed by you in relation to all of the defendants on trial.

Mr. Boudin: If your Honor please, I am particularly concerned that we have a general exception so that we do not have to object each time.

The Court: All you have to do is to ask the stenographer to note the exception.

Mr. Boudin: So that we don't have to rise each time? I ask the stenographer to please note that.

Mr. Marks: May we have the question and answer read?

3281 The Court: Yes.

(Question and answer read.)

By Mr. Marks.

Q. Who stepped on the truck? A. Hogan first.

Q. And what did he say? A. He asked me where I was going.

Q. What did you say? A. Up to the gas station.

Q. What did he say? A. Then Weinheimer came. I drove around the block and they told me I had better wait until he got word to Buffalo.

Q. Did they say anything else at that time? A. Well, he contacted Perry.

Q. What was said before they talked about contacting
3282 Perry? A. Perry's solicitor was in town that way, in the City, and he finally came along. We waited there for quite a while.

Q. What was said about Perry? A. Well, Weinheimer said that the truck could not go until he got his money from Perry. I tried to get hold of this Mr. Ennis, and he finally drove along in his car and he stopped.

Q. Did he say whether it was money for what? A. For labor, I suppose.

Q. What did you say about the truck? A. I told him I was supposed to pick up a load in Albany.

Q. Did you tell him when? A. The next morning.

Q. What else did he say to that? A. I can't recall word for word.

Q. Well, the substance of the conversation? A. He said, "You are not going until I get straightened up with Perry."

Q. Was your truck empty then? A. Yes.

Q. Now, what did you say? A. Well, I says, "I will try to get hold of Mr. Ennis." I knew he was in the City.

Q. Who had unloaded your truck? A. I had peddled the load on the way down.

Q. Had any of it been unloaded in the City? A. No. 3284

Q. Now, can you remember any further part of that conversation? A. Well, Mr. Ennis and Weinheimer talked together after that.

Q. Were you there? A. I was not with them. They went in Mr. Ennis' car and talked. I stayed out with the truck.

Q. This Mr. Ennis is not Mr. Ennis at the Government counsel table, is he? A. No.

Q. Who is he? A. He is a solicitor for Perry.

Q. You say you didn't hear that conversation? A. No, I didn't.

Q. Where did you go with Weinheimer and the other two men? A. I didn't go anywhere.

Q. Well, when we last left the conversation I think the truck was on the street? A. It was. 3285

Q. Where did you go? A. I stayed there until Weinheimer and Ennis got things straightened out through wires and telephones——

The Court: Now, one moment, so there won't be any confusion about it. After Hogan first stepped on your truck did you go around the block?

The Witness: Yes.

By the Court.

Q. And came back to a point near where you were when they first got on the truck? A. Well, two blocks from where they got on the truck.

Q. Then you remained there until Mr. Ennis came? A. Yes.

Q. And then Mr. Ennis had a talk with Mr. Weinheimer? A. That is right.

Q. Now, you were not present at that talk? A. No.

Q. But during that conversation or during the time Mr. Ennis and Mr. Weinheimer were together, did your truck remain where it was after you had gone around the
3287 block? A. Yes.

The Court: All right.

By Mr. Marks.

Q. Where did your truck go after that? A. We took it to 33rd and Tenth Avenue, a parking lot that night.

Q. And what was said about taking it to that parking lot? A. They said they would see that I did not pull out of town.

Q. What did you say to that? A. I had to get it off the street, and I had to put it in a parking lot, and they said it would be all right to park it there.

3288 Q. Was there anything said about your going to Albany that night? A. I said I had to go. They wouldn't let me. That is all they said; that is all that was said about it.

Q. What did he say? A. He says, "You can't go to Albany until I get paid; until Perry pays me."

Q. Do you remember anything else that was said about going to Albany? A. Very little conversation. I can't recall.

Mr. Marks: Will your Honor bear with me for just a moment?

The Court: Yes.

Mr. Marks: May I have this marked for identification?

The Court: Yes.

Mr. Marks: The only part I am interested in, your Honor, is page 4.

The Court: Mark page 4.

(Marked Government's Exhibit 31 for identification.)

Q. I show you Government's Exhibit 31 for identification and I direct your attention particularly to this portion around the middle of the page (indicating). Will you look at that and see if that refreshes your recollection as to whether anything else was said about your going to Albany on that occasion? 3290

Mr. Murray: I object, if your Honor please, on the ground that there has been no basis laid.

The Court: Overruled.

Mr. Murray: Exception.

Q. Do you remember now whether anything else was said——

The Court: No. Has your recollection been refreshed?

The Witness: Yes. 3291

Q. Can you tell us now what else was said about your going to Albany? A. Harry Winters and Weinheimer talked together then.

The Court: In your presence?

The Witness: No.

Q. What did you hear them say? A. Well——

The Court: He said it was not in his presence.

Q. What did you hear them say in your presence? A. I didn't hear him say anything.

Q. Having looked at Government's Exhibit 31 for identifictaion, does it refresh your recollection as to anything that was said in your presence about going to Albany? A. After he and Winters talked together.

Q. What did you hear then? A. He came over and said I would not pull out.

Q. Who said? A. Weinheimer.

3293

The Court: He said what?

The Witness: I would not pull out.

Q. What did you say? A. I said I got orders to pick up a load there in the morning from the paper company.

Q. What did Weinheimer say? A. He said, "If you know what's good for you you will stay here."

Q. Did he say anything else? A. No.

Q. Was there any conversation about a sum of money

The Court: Yes or no.

A. Not to me.

Q. Do you remember whether you ever saw Weinheimer

3294 after that up to June 1, 1938? A. On several occasions.

Q. Up to June 1st? A. Yes.

Q. About how many times? A. Every time I came to New York.

Q. Do you know how many times that was between this occasion which you told us about and the 1st of June? A. I can't say exactly. Probably average of once a week.

Q. Did he do any work on your truck on those occasions? A. Yes.

Q. Did you ever pay him any money? A. Yes.

Q. Did you ever hear him talking on the telephone on any of those occasions? A. Well, different places in the City, yes.

Q. To Mr. Perry specifically? A. No.

Q. Do you remember whether before you met Weinheimer for the first time you were stopped by anyone else in New York City? A. Yes.

Q. When? A. Well, in the fall of 1937 was the first time I was ever stopped.

Q. Do you remember the month? A. I can't, no.

Q. Where was it?

3296

Mr. Murray: Now, I object, if your Honor please.

The Court: Denied.

Mr. Murray: Unless it is connected——

The Court: I am going to allow it.

Mr. Murray: Exception.

A. Rockwood Chocolate Company in Brooklyn.

Q. Were you there to pick up a load or to deliver a load? A. Pick up a load.

Q. Had you made any deliveries in the metropolitan area? A. Yes.

Q. The same day? A. The same day.

Q. Now, had any work been done on your truck at the Rockwood Chocolate Company before you were stopped? A. Probably there was 50 bags on that truck.

3297

Q. That is, it was in the process of being loaded? A. Yes.

Q. Who came up? A. I can't recall his name. In fact, I don't remember.

Q. One man? A. One man.

Q. Would you know him if you saw him now? A. I don't believe I would.

Q. Did that man show you anything? A. He showed me a union book.

Mr. Boudin: I object to that.
The Court: Overruled. Yes or no.

A. (Continued) Yes.

Mr. Boudin: Exception.

Q. What did he show you?

Mr. Boudin: I object to that.
The Court: Overruled.
Mr. Boudin: Exception.

3299 A. An 807 book.
Q. Did he ask you for anything?

Mr. Murray: I object if your Honor please.
Mr. Boudin: I object to that.
The Court: I will allow it. Yes or no.
Mr. Boudin: Exception.

A. Yes.
Q. What did he ask you for?

Mr. Boudin: Objected to.
The Court: Overruled.
Mr. Boudin: Exception.

3300 A. Money to pay for loading, $9.42.
Q. Did he mention that amount? A. Yes.
Q. Now, will you tell us the entire conversation you had with that man?

Mr. Boudin: That is objected to, if your Honor please.
The Court: Overruled.
Mr. Boudin: Exception.

A. He explained to me that I could not load there until I put a union man on the truck.

Q. What did you say? A. I asked him why. I had loaded there on the average of once every two weeks and never had any trouble before.

Well, he said it was signed up here. He said, "You can't load here without a union man." And rather than have an argument I went to the shipping clerk of Rockwood.

By the Court.

Q. Did you have a talk with him? A. Conversation with the union man——

Q. No, with the shipping clerk? A. Yes. 3302

Q. Don't tell us what it was. After that you did not have any further talk with the person you had previously spoken with? A. After I came back from the shipping clerk, I did.

Q. Did you? A. Yes.

By Mr. Marks.

Q. What was that conversation then?

Mr. Boudin: Same objection.
The Court: Overruled.
Mr. Boudin: Exception.

A. With the 807 man, you mean? 3303

Q. Yes. A. He asked me how I made out. I said, "The shipping clerk will be out and fix it up. It is all right for you to load."

Q. Did he load? A. He did.

Q. How long did it take? A. I would say 45 minutes.

Q. And was he paid anything? A. I didn't see him paid, but the shipping clerk did pay him.

The Court: No, that is all. He did not see him paid.

Q. In the conversation which you had with this man about the shipping clerk, what did you say? A. That the shipping clerk will take care of him.

Mr. Cahill: If your Honor please, I respectfully call attention to the fact that it has reached the magic hour of a quarter to twelve.

Mr. Boudin: If your Honor please, before your Honor takes a recess, I would like to move to strike out all testimony of this witness with reference to
3305 the occurrences and conversations with the unknown man. When the question was first asked, I assumed that was a further conversation with Weinheimer that was being asked for.

The Court: Well, I did not have that impression.

Mr. Boudin: Well, that was my impression.

The Court: Motion denied.

Mr. Boudin: Exception.

The Court: The jury is excused for a few moments.

(Short recess.)

(The clerk called the roll of defendants.)

(Last question and answer read.)

3306 Q. Was there any further conversation on that occasion that you have been describing to us? A. No.

Q. Now, between the time that you were first stopped that you told us about and the spring of 1938 were you stopped on any other occasion?

Mr. Boudin: Objected to.

The Court: Yes or no.

A. Yes.

Mr. Boudin: Exception.

Q. About how often?

Mr. Boudin: Objected to.
The Court: Overruled.
Mr. Boudin: Exception.

A. I will say half the trips I came in.

Q. And I believe you told us you came in about once a week? A. Yes.

Q. Do you remember any specific times when you were stopped? A. No.

Q. Can you tell us any places? A. Piel's Brewery in 3308
Brooklyn, National Battery in North Bergen.

Q. That is North Bergen, New Jersey? A. Yes, sir.

Q. Do you remember whom you saw on that occasion?

Mr. Boudin: Objected to.
The Court: Overruled.
Mr. Boudin: Exception.

A. I couldn't remember now.

Q. Would you recognize him if you saw him today? A. I don't think so.

Q. How many persons were there? More than one or just one? A. One.

Q. Did he show you anything? 3309

Mr. Boudin: Objected to, if your Honor please.
The Court: Sustained.

Q. Did you see anything on his person? On his clothing? A. A union button.

Mr. Boudin: Same objection.

The Court: Strike that out. That may be answered yes or no.

(Last question read.)

Q. What did you see?

Mr. Boudin: That is objected to.

The Court: I will sustain the objection to that form. Did you examine what you saw?

The Witness: No.

The Court: Do you know what it said on it, if anything?

The Witness: Well, I recognized it as a union
3311 button; that is all.

Mr. Boudin: I move to strike out the answer.

The Court: I will allow it to stand.

Mr. Boudin: Exception.

Q. Did you recognize it as a union button of any particular union? A. 807.

Mr. Boudin; That is objected to.

The Court: I will allow that.

Q. Had you seen such buttons before? A. Yes.

Q. Have you seen them since? A. Yes.

Q. What conversation did you have with this man that day?

3312 Mr. Boudin: That is objected to.

The Court: Sustained.

Q. Did the man show you anything?

Mr. Boudin: That is objected to unless the answer is yes or no.

The Court: Well, he may answer yes or no.

A. No.

Q. Have you ever been stopped since that time at North Bergen, New Jersey?

Mr. Boudin: That is objected to.
The Court: He may answer.
Mr. Boudin: Exception.

A. Yes.

Q. Did you ever see the man who stopped you the first time there on any of these subsequent occasions?

Mr. Boudin: That is objected to.

A. No. 3314

The Court: Sustained.

Q. On these subsequent occasions at North Bergen, New Jersey——

The Court: Well, you say "these subsequent occasions." Did you ever see the man again whom you saw on the first occasion at North Bergen?
The Witness: No.

Q. Now, do you remember how long after the first time at North Bergen you were stopped there again?

Mr. Boudin: I object to that. There is no such 3315
evidence. On the contrary.
The Court: Sustained.

Q. Were you stopped again? A. No.

Mr. Boudin: I object to that.
The Court: Do you press your objection?
Mr. Boudin: Yes.

The Court: If you do I will have to sustain it and strike out the answer which is "no."

Mr. Boudin: Well, I didn't hear the answer and I haven't heard three-quarters of the answers given today.

The Court: Now do you want to press your objection?

Mr. Boudin: My associates want me to withdraw it. I withdraw it.

The Court: All right. Objection withdrawn. The answer "no" stands.

3317 Q. Do you remember, Mr. Austin, any other places where you were stopped?

Mr. Boudin: I object to that. He answered "no."

The Court: He may answer.

A. No.

Q. Do you remember any other consignees that you hauled merchandise to in the fall of 1937? A. I can't remember their names.

Q. Do you remember whether or not you were stopped after this first time?

3318 Mr. Boudin: I object to that.

The Court: Sustained. He has already said he doesn't remember any other occasions.

Mr. Marks: I thought he said he didn't remember any other names, your Honor.

The Court: No. Read not the last question but the next question previous to it and the answer.

(Question and answer read as follows: "Q. Do you remember, Mr. Austin, any other places where you were stopped? A. No.")

Mr. Marks: My interpretation of that was he didn't remember the names of the places, not that he had never been stopped.

The Court: I can't help what your interpretation is, Mr. Marks. It is the interpretation which the Court feels the jury ought to have the opportunity to draw from the evidence that matters in this case. Proceed.

Mr. Marks: May I pursue that, your Honor, because if I made my question vague——

The Court: I don't think your question was at all vague. You first asked him the places where he was stopped; then you asked him if he remembered 3320
the names of any other consignees and he said "no." Now proceed.

Q. Do you remember whether or not you were stopped at any consignees?

Mr. Boudin: That I object to.

The Court: Sustained.

Mr. Cahill: May we have a moment, if your Honor please?

The Court: Yes.

(Conference among government counsel.)

Mr. Marks: That is all.

The Court: Cross-examine.

3321

Cross-examination by Mr. Murray.

Q. Now are you able to fix the precise date when you related this incident about your empty truck at 24th Street and Tenth Avenue? A. No.

Q. Do you know whether or not it was about the 15th of May? A. I would say around that.

Q. Around the 15th? A. Yes, sir.

Q. Might it have been the 22nd of May? A. Yes.

Q. Well, would you say that the earliest that you were stopped was on the 15th of May? A. No.

Q. Well, were you stopped any earlier than the 15th of May? A. Yes.

Q. I am talking now about this incident of your empty truck at 24th Street and Tenth Avenue. Do you understand? A. Yes.

Q. Wasn't that after, at least, the 9th of May? A. Yes.

Q. Now I show you this paper and ask you if you recognize this signature on the paper. A. Yes.

Q. Do you know whose signature that is? A. Mr.
3323 Perry's.

Q. Beg pardon? A. Mr. Perry's.

Q. Mr. C. E. Perry? A. C. E. Perry.

Q. Was he the president of Perry's Express? A. Yes.

Q. In May of 1938? A. Yes.

Mr. Murray: I offer this paper in evidence.

The Court: Show it to counsel.

(Mr. Murray hands paper to government counsel.)

Mr. Cahill: No objection.

(Marked Defendants' Exhibit J.)

The Court: What is the date of it?

Mr. Murray: May 9, 1938.

3324

Q. Now is your present recollection when you were stopped with your empty truck around the 15th of May? A. Around that.

Mr. Murray: May I call the jury's attention to this Exhibit J, if your Honor please?

The Court: Yes.

Mr. Murray: Without reading it to you, ladies and gentlemen, this is an agreement made between Local 807 and Perry's Express, Incorporated, dated and executed May 9, 1938.

Q. Well, now, isn't it a fact that at the time of the stopping of your empty truck or before that time, rather, that Mr. Perry had told you that he had signed a contract with Local 807 in New York in the matter of their members assisting in the unloading of his trucks that came to New York? A. Yes.

Q. And that conversation you had with Mr. Perry was before May 15, 1938? A. Before I was stopped. 3326

Q. Yes. A. Yes.

Q. Now, had Mr. Perry instructed you on that occasion when you took your load to New York to get in touch with Local 807?

Mr. Cahill: I object to that, your Honor. It is contrary to the fact, and assuming a point not proved in issue. There is a subsidiary clause in there.

The Court: I will permit him to answer the question if he understands it.

Mr. Cahill: When he took his load; there is a subsidiary clause there, your Honor.

The Court: I understand.

3327

A. I was to get in touch with Weinheimer, were my orders.

Q. And did Mr. Perry give you those instructions before you had started for New York on this occasion about May 15th when you say your empty truck was stopped? A. Yes.

Q. Did you get in touch with Weinheimer? A. I didn't unload in New York.

Q. Well, did you get in touch with him when you came to New York? A. I did not.

Q. Where did you unload? A. Hudson School for Girls.

The Court: Where is that located?

The Witness: Hudson, New York.

The Court: The next place?

The Witness: Wassaic, Wingdale, Sing Sing Prison. That is all.

Q. Now, did you make any delivery at all in New York a day or two prior to your being stopped at 24th Street, as you have related here?

3329

The Court: Do you mean New York State or New York City?

Q. New York City? A. No.

Q. Did you have a load to take back from New York City to Buffalo on that occasion? A. I did.

Q. What load did you have? A. I had a load from Rockwood.

Q. Was that in Brooklyn? A. Yes.

Q. Did you take that load back? A. No.

Q. Did you go to Rockwood? A. No.

Q. Did you tell Weinheimer that you did have to go to Rockwood to get a load on your return to Buffalo? A.

3330 I don't remember.

Q. Well, what did you tell him in respect to a load? A. That I got orders in the meantime to pick up one in Albany.

Q. But you have no recollection of having said anything about Rockwood's in Brooklyn, is that right? A. No.

Q. Did you take a load back from Rockwood's in Brooklyn? A. No.

Q. On that occasion? A. No.

Q. Did you take a load back from Albany? A. Yes.

Q. Well, do you recollect what you said before recess in respect to whether or not you testified that you were going back from New York City to Albany empty? A. I do.

Q. Did you say you were going back from New York to Albany empty? A. I did.

Q. Did you tell that to Weinheimer? A. Yes.

Q. Did you know at that time that you had a load to pick up from Rockwood's in Brooklyn? A. That was my orders when I left Buffalo.

Q. You mean you had orders to pick up a load from Rockwood's in Brooklyn when you left Buffalo to come 3332
to New York? A. Yes.

Q. And then subsequently were those orders cancelled? A. Yes.

Q. So when you testified a moment ago that you had a load to pick up from Rockwood's you knew at that time that your order had been cancelled, didn't you? A. Not until I had been—not until I hit New York.

Q. What time did you hit New York? A. I don't recall what time of day it was.

Q. Did you sleep in New York the night before? A. No.

Q. When did you get your orders from Buffalo to cancel your load to be taken back from Rockwood's? A. When I got to 33rd and Tenth Avenue gas station there was a wire 3333
there.

Q. That is when you got your cancellation? A. Yes.

Q. Who gave you it? A. A wire from Perry's.

Q. Beg pardon? A. A wire from Perry's.

Q. Will you please keep your hand down from your mouth. That is, you got a telegram from Perry's? A. Yes.

Q. And did you get that telegram before you say that Weinheimer talked to you at 24th Street? A. Yes.

Q. Were you aware of the fact at that time when Weinheimer talked to you at 24th Street that Mr. Perry had signed a contract in behalf of his company with Local 807?

Mr. Cahill: I objected to it as asked and answered heretofore.

The Court: Overruled.

A. Yes.

Q. Now you testified here that some time in 1937 in Brooklyn you had a conversation with a man named Hogan? A. Not in Brooklyn.

3335 Q. In New York was that? A. Yes.

Q. Where in New York? A. Well, either 24th or 25th Street between Tenth and Eleventh Avenues.

Q. Was that 1937? A. No.

Q. When? A. 1938.

Q. When in 1938? A. The same time that I was with Weinheimer when they stopped me in May.

Q. Well, did you have a conversation with some man in Brooklyn in 1937 whom you could not identify? A. Yes.

Q. Will you fix the date? A. I can't.

Q. What month was it? A. I can't say that.

Q. What time of the year was it? A. In the fall.

Q. You testified at that time that you were shown a union book containing the numerals 807, did you not? A.

3336 Yes.

Q. What part of the book did you see the numerals on? A. The cover.

Q. On the cover? A. Yes.

Q. Did you make your identification of the union book by looking at the numerals 807? A. It had an emblem on the book.

Q. An emblem? A. Yes.

Q. What emblem was on it? A. I can't—I don't know as I can describe it. A picture of a bridle. I knew what it was when I seen it.

Q. But you saw the numerals on the outside of the book, didn't you? A. I am sorry, I didn't see the number. I recognized the book. I seen it before.

Q. Didn't you testify on direct examination this morning that you saw the numerals 807 on the outside of the book?

Mr. Marks: I don't believe there was such testimony, your Honor.

The Court: Just a moment. Counsel is asking him what he testified to. Counsel does not have 3338
to put into the mouth of the witness what he said. That is not the purpose of cross-examination. The witness can take care of himself. He knows what he said.

A. I think I said he showed me an 807 book.

Q. Is your recollection now that you told the District Attorney that the numerals 807 were on the book? A. I think I stated that he showed me an 807 book. I think that was the answer.

Q. Well, did you just tell me a moment ago that the numerals 807 were on the book? A. I did.

Q. You say now that they weren't on the part of the book that you saw? A. I don't remember seeing the numerals. 3339

Q. Will you look at this book that I hand you. A. Yes.

Q. Will you look on the outside of it. A. (Witness looks at book.)

Mr. Murray: I ask that it be marked for identification.

(Marked Defendants' Exhibit K for Identification.)

Mr. Murray: I offer it in evidence (handing to government counsel).

Mr. Cahill: No objection.

(Defendants' Exhibit K for Identification received in evidence.)

Q. Is it a fact that you just looked at the outside of the book that the men presented to you on that occasion in 1937 in Brooklyn, the men whom you can't identify? A. I can't recall whether that was exactly the emblem or not.

3341 The Court: Strike out the answer. Repeat the question.

Q. Did you only look at the outside of the book that these men whom you can't identify presented to you in Brooklyn in 1937? A. That is all.

Q. You didn't open the book? A. No.

Q. At any time in New York had you been shown a book with the numerals 816 on it? Local 816? A. I think I have. I can't recall where, though.

Q. Do you remember whether or not those are the numerals of a local in New York? A. I couldn't say as to that.

Q. And on the occasions that you have been in New York did anyone ever show you a book carrying the

3342 numerals 814? A. No.

Q. Or 808? A. No.

Q. 820? A. No.

Q. 282? A. No.

Q. 202? A. No.

Q. 138? A. No.

Q. 485? A. No.

Q. 553? A. No.

Q. Do you know whether or not there are locals in New York carrying those numerals?

Mr. Cahill: I object to it as not within the scope of the direct.

The Court: I will allow him to answer.

A. I know there are other locals. I don't know the numbers of them.

Q. Do you know the number of 816? A. I do not.

Q. Did you know there was a Local 816? A. No.

Q. Or 814? A. No.

Q. Or 808? A. No. 3344

Q. On those occasions when these unidentified men talked to you did you ever open the book and examine the inside of it? A. No.

Q. Is it safe to say that you only glanced at the cover of it? A. I knew that the men was 807 men.

The Court: No.

Mr. Murray: May I have it stricken out, if your Honor please?

The Court: Listen to the question Mr. Austin. The stenographer will repeat it.

Q. (Read.) A. Yes.

Q. Now, had you ever met the men that stopped you in Brooklyn before that occasion? A. No. 3345

Q. Have you ever seen them after that occasion? A. Not that I recall.

Q. Now, on this occasion about May 15th when your empty truck, you say, was stopped by Weinheimer, you say that a man named Ennis appeared and had a talk with Weinheimer which you did not hear. That is correct, isn't it? A. Yes.

Q. Do you know who Mr. Ennis was at that time? A. Yes.

3346

Q. Do you know what position he occupied? A. Yes.

Q. What? A. Solicitor.

Q. Beg your pardon? A. A solicitor.

Q. Do you know whether or not Mr. Ennis' place of business was in New York or in Buffalo? A. His place of business was in Buffalo. He was in New York on business at the time.

Q. That is, did he reside in Buffalo? A. Yes.

Q. But you met him in New York on this occasion? A. Yes.

Q. Did you have a talk with Mr. Ennis after you had
3347 talked with Edward Weinheimer? A. I stayed all night with him.

Mr. Murray: That is all.

The Court: Any further cross-examination?

Mr. Boudin: No.

The Court: Any redirect examination?

Mr. Marks: May I read to the jury the signatures on Defendants' Exhibit J, your Honor?

The Court: Yes.

Mr. Marks: This contract that was offered in evidence, ladies and gentlemen, has the following signatures: For the firm of Perry's Express, Inc., C. E. Perry, president; for Local 807, Austin Furey.

3348

MILTON L. LAHN, residing at Bridgeton, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. What is your business, Mr. Lahn? A. Trucking business.

Q. How long have you been in that business? A. Since 1930.

Q. What is your company? A. Lahn Transportation Company.

Q. What is your position in the company? A. Owner.

Q. Between what points did you haul merchandise? A. New York, Philadelphia, Boston, Washington, South Jersey.

Q. How many pieces of equipment did you have in your business in the beginning of 1937? A. I think it was twenty.

Q. Twenty pieces of equipment? A. Twenty units.

Q. At that time, in the beginning of 1937, did you haul 3350
merchandise into New York City? A. Yes, I did.

Q. From South Jersey? A. Yes.

Q. In the beginning of 1937 who unloaded your merchandise in New York City? A. The drivers and helpers from down South Jersey.

Q. Your drivers and helpers? A. That is right.

Q. Did a time come when your own men did not unload merchandise in New York City? A. Towards the spring of 1937.

Q. The spring of 1937? A. Yes.

Q. Did you receive a telephone call about that time? A. Yes, I did.

Q. Did you come to New York following that telephone call? A. After several telephone calls I did.

Q. When did you come to New York? A. Well, it was 3351
in the spring; some time in the spring of 1937.

Q. Whom did you meet?

Mr. Boudin: Objected to, if your Honor please.

The Court: Overruled.

Mr. Boudin: Exception.

Q. Whom did you meet? A. Fred Kolb.

Q After that meeting did Mr. Kolb unload some of your trucks? A. He unloaded some before that and he unloaded after that, too.

Q. Where did you meet Kolb? A. At Brooklyn at the foot of Joralemon Street.

Q. Where did you go with Kolb? A. Up to the union hall.

Q. Where was that? A. Canal and Varick Streets.

Q. Was there anyone else with you? A. Me and Kolb.

Q. Whom did you see there? A. Well, I seen quite a few officials in there of the union.

Q. How many persons were there? A. Oh, I don't know.
3353 Possibly four or five.

Q. Did you have any conversation in the union hall? A. Yes.

Q. Did Kolb introduce you to these persons? A. He told them who I was but he didn't tell me who they were.

Q. Did he say anything to you about who they were? A. No. Of course, they were delegates and officials——

The Court: No. Strike that out. The question was whether he said anything to you as to who they were.

The Witness: Their names?

The Court: Did he tell you who they were?

The Witness: No.

The Court Names or otherwise?

3354 The Witness: No.

Q. Did he say what they were? A. No.

Q. Do you recall the conversation in the union hall? A. Not exactly, but approximately I do.

Q Well, will you give us the substance of that conversation?

Mr. Boudin: Objected to until the persons are identified.

The Court: I don't hear you, Mr. Boudin.

Mr. Boudin: I said we object to it unless the persons with whom he spoke are identified.

The Court: Overruled.

Mr. Boudin: Exception.

A. More or less that I had to sign a contract, union contract.

Mr. Boudin: I move to strike it out.

The Court: Strike it out.

Q. Mr. Lahn, will you just state what was said? The words you said and the words the other persons present in the union hall said in your presence? A. They told me I had to sign a union contract. 3356

Mr. Boudin: I move to strike that out.

The Court: I will allow it to stand.

Mr. Boudin: Exception.

The Witness: They told me I had to sign a union contract in order to unload my trucks in New York City, and I told them I couldn't unload—I mean I couldn't sign a contract and I didn't want to sign a contract that day or any other day unless I had to, and finally after talking and arguing up there a while they told me they would give me another week's time to go back and talk it over with other people in my office, and I would have to sign a contract. 3357

Q. Then what did you do? A. Well, I went back and tried to more or less dodge the thing. Finally I got a couple of more telephone calls that I had to come up there.

Q. After this first conversation did you speak to Mr. Kolb on several other occasions? A. Yes.

Q. You know his voice? A. Very well.

Q. Now, going back to the period just before you came up to New York and met Kolb, did you receive a telephone call? A. Yes.

Q. Do you know who called you? A. Yes.

Q. Who was it? A. Mr. Kolb.

Q. What was that conversation on the telephone? A. He told me I had to have 807 men on my trucks and he was going to unload them because he was the first man to go on the job, and I told him I didn't want any men. He said I had to have one. I said, "If I have to have one, go ahead and unload and I will send you up the money."

3359 Q. To Kolb? A. To Kolb.

Q. Was there anything else said in that conversation? A. Then he said I had to come up there to sign a contract and I told him I would rather not sign a contract, but if I had to have 807 men I would rather keep on paying without signing a contract.

Q. Was there anything else said? A. He said the union wouldn't allow him to work unless I had signed a contract.

Q. He said that, too? A. Yes, and if he couldn't work or 807 men couldn't work I couldn't get my trucks in New York City to unload.

Q. Well, was anything said about other 807 men working? A. Well, he said he was the number one man because he got the trucks first and if I had to have any more men

3360 he would get them for me.

Q. Was there anything said about you getting any 807 men? A. No. In fact, there was another man with him at the time I spoke to him.

Mr. Boudin: I object.

The Court: Wait a minute. Was this conversation over the telephone or in person?

The Witness: This was over the telephone, but this other time I was with him there was another man with him.

The Court: Well, let us confine ourselves now to the time when you talked over the telephone.

The Witness: Yes.

The Court: Strike out the statement of the witness that there was another man with him.

Q. It was following that telephone conversation——

The Court: One moment. Mr. Boudin rose to make an objection and I don't know whether I cut him off or not.

Mr. Boudin: Well, I objected to the additional statement that was apparently not an answer to the question. 3362

The Court: Well, I have stricken it out. Does that cover your point?

Mr. Boudin: Yes.

Q. Was it after this conversation on the telphone that you met Kolb in New York and went with him to the union hall? A. Yes.

The Court: The first time?

Mr. Ennis: The first time.

By the Court.

Q. Was this conversation that you have just related over the telephone had before the first visit that you made to what you call the union hall? A. I had several telephone calls from him before—— 3363

Q. No, no. You said you were up to the union hall? A. That is right.

Q. And you went away for a week to think something over? A. That is right.

Q Was this telephone conversation you have just related before that visit to the union hall? A. That was before, yes.

By Mr. Ennis.

Q Subsequent to your visit to the union hall did you have conversations with Kolb about unloading your merchandise? A. Over the telephone.

Q Well, do you recall one such conversation?

Mr. Murray: Your Honor, might we have the time fixed?

The Court: Yes. He can say first whether he remembers one such conversation, and then we will try to get the date of it.

Mr. Murray: All right.

3365

A. I don't remember the exact conversation, but I do remember that he called me——

The Court: No, no.

Mr. Ennis: Just a minute.

The Court: You were just asked whether you remembered the particular conversation after the occasion of your first visit to the union hall.

The Witness: Oh, I am sorry. After I went up to union hall I got another call.

By the Court.

3366 Q. From a person whose voice you recognized? A. That is right, as Mr.——

Q. And whose voice was it? A. Mr. Kolb's.

Q. And how long was that conversation after the occasion when you visited the union hall for the first time? A. Oh, I would say three or four days.

The Court: All right.

By Mr. Ennis.

Q. What was that conversation? A. That I had to come up and sign a contract; that he could not keep on working no more unless I had to have his contract; and I finally told him——

The Court: In that conversation?
The Witness: That is right.

A. (Continued) And I told him that I was not going to union hall any more to be treated more or less like a dog up there; that I would meet one of their delegates some other place, and we would talk it over, which he 3368
said he would try to arrange for me; and then he called me back a night or so later and told me that he had an appointment with Mr. Hickey and for me to meet him in Brooklyn at a restaurant at 8 o'clock that morning—no, not that morning—the following morning. And I told him I would meet him in the restaurant and we would talk it over.

Q. Did you go to New York the next morning? A. Well, I don't know whether it was the next morning, but it was several mornings later I did go to New York and meet Mr. Hickey.

Q. Where did you meet Mr. Hickey? A. It seems to me it was Atlantic and Flatbush in the Bickford Restaurant; I am not certain of that, but I think it was. 3369

Q. Who was present at that meeting? A. Mr. Kolb and Mr. Hickey.

Q. What time of the day was it? A. It was morning, early morning.

Q. Did you have a conversation? A. Yes, I did.

Q. What was said? A. Kolb introduced me to Mr. Hickey. And they told me that I had to sign a contract; and I told them I did not want to sign no contract; if I

had to have an 807 man I would like to have him keep on working for me, but I didn't want to sign no contract. And Kolb said if I didn't sign no contract he would have to stop working, and he asked Mr. Hickey that, and Mr. Hickey said yes. And I had to sign a contract that day to get my trucks unloaded which I had a truck in Brooklyn that morning.

So I told him I would like to have another week's time or so I would have the proper authority to sign a contract, and he said I had to sign that morning or the trucks would not be unloaded; so there was no other choice in the matter and I had to sign the contract.

3371

Mr. Boudin: I move to strike it out.

The Court: Strike out "there was no other choice."

Q. When he made that statement to you about signing a contract or you could not get your trucks unloaded, what did you say? A. Well, I says, "I don't want to lose no customer; I don't want to have trucks tied up and take merchandise back. There is no other choice."

Mr. Boudin: I move to strike that out.

The Court: Strike out "There is no other choice."

3372 Q. Did you say that; did you say that about choice? A. Yes, that is right. I told him I had no other choice; I had to sign it.

Q. And then did you sign it? A. Yes.

Q. Did you say anything else when you signed it? A. I told Kolb to go immediately over to the place and unload the truck because the customer had to have delivery at 8 o'clock in the morning.

Q. Did anyone else sign a contract there? A. It seems to me they did not.

Q. Did Mr. Hickey sign it there? A. I don't think he did.

Q. Were you given a copy of it? A. I don't think so.

Mr. Ennis: May I have this marked for identification?

The Court: Yes.

(Marked Government's Exhibit 32 for Identification.)

Q. Mr. Lahn, I show you Government's Exhibit 32 for Identification and ask you if you recognize your signature on it? A. I do. 3374

Q. Is that the paper that you signed that morning in Bickford's Restaurant? A. Yes.

Mr. Ennis: I offer it in evidence.

The Court: Show it to counsel.

Mr. Boudin: I have no objection.

(Government's Exhibit 32 for Identification received in evidence.)

The Court: What is the date of it?

Mr. Ennis: April 19, 1937.

May I read the signatures to the jury?

The Court: Well, tell the jury in substance what it is.

Mr. Ennis: This is an alleged agreement between 3375
Lahn Motors Transportation Company and Truck Drivers and Chauffeurs of Local 807, signed for the firm of Lahn Motors Transportation by Milton Lahn, and for Local 807, Thomas Hickey.

The Court: We will take a recess for two or three minutes. I will ask the jury, unless they feel the need to do so, not to leave their seats for the

moment. One of the defendants desires to leave the room, and he may do so.

I would like to make this general observation for the benefit of all counsel. It is not essential that exhibits should be read in their entirety unless there is some special reason, but it is advisable that the general provisions, insofar as the counsel who offers the document in evidence so regards it, should be called to the attention of the jury, because if the paper itself is simply handed to the jury and passed around, they have to read it, and during the period that the juror is looking at the contract, he may be
3377 missing testimony which is being given by the witness; and it seems to me that it is desirable to say no more than the fact that this is a contract and it has the signatures of Brown and Jones and whoever may have signed it. I think that it should be outlined, that it is dated so and so; it is for the period of so and so; and it contains a schedule of wages and terms and conditions; and then if there is any particular feature about it that either counsel in offering any exhibit in evidence thinks the jury ought to have in mind at the time, why that can be stated.

(Discussion off the record.)

The Court: We will take a recess to 2 o'clock.

(Recess to 2 P. M.)

3378

AFTERNOON SESSION 2 P. M.

The Court: All right.

Mr. Ennis: May I proceed, your Honor?

The Court: Go right ahead.

MILTON L. LAHN resumed the stand and further testified as follows:

Direct examination (continued) by Mr. Ennis.

Q. Mr. Lahn, after you signed this paper in Brooklyn that morning, where did you go? A. I think I went over to Fred Fear's to see if the truck was unloading. 3380

Q. To see if the truck was unloaded? A. Yes.

Q. Where is Fear's? A. At the foot of Joralemon Street in Brooklyn.

Q. Was Kolb there? A. He was unloading the truck.

Q. Did you have any further conversation with him that day? A. Outside of talking about his work, and he said he would give me a day's work if he could.

Q. Was there anything else said along that line? A. Yes; then about his pay, that he would get a check once a week instead of paying him every day.

Q. Was anything said about how much you would pay him?

Mr. Boudin: I object to that.

The Court: What is the ground of your objection? 3381

Mr. Boudin: On the ground that there is an agreement which shows what Local 807 men were to get——

The Court: Objection sustained.

Mr. Boudin: (Continuing) If he demanded anything else—excuse me.

The Court: What did you pay him?

The Witness: $9.42 a day at that time.

Q. Do you recall anything else that was said in that conversation about the amount of his work? A. That he was supposed to give me eight hours' work.

Q. Mr. Lahn, besides Mr. Kolb and your own drivers, did anyone else unload your trucks in New York City in 1937? A. Yes.

Q. Who were those persons?

Mr. Boudin: That is objected to as immaterial, if your Honor please.

The Court: I will allow it.

Mr. Boudin: Exception.

3383 Q. Who were those persons?. A. Tom Sharkey and Red Klein—well, Abe Klenofsky.

Q. Did he have another name? A. Well, I guess they used to call him "Red Klein", but his right name was Abe Klenofsky. I don't know if I pronounce it right or not.

Q. Will you stand and look around this courtroom and tell the Court and jury if you see Tom Sharkey or Red Klein or Abraham Klenofsky, as you say? A. (Standing) There is Sharkey over there (indicating).

By the Court.

Q. Which row? A. Second row.

Q. How far from this end? A. Fifth man over there.

3384 That looks like him (indicating).

Q. Do you see the other person? A. It looks like him sitting in front of him (indicating).

Q. In the front row? How many men from this end? A. Fourth man.

The Court: All right.

Mr. Ennis: May the clerk call the names of Thomas Sharkey and Abraham Klenofsky?

The Court: Yes.

The Clerk: Thomas Sharkey.

(A man stood.)

The Clerk: Abraham Klenofsky.

(A man stood.)

Mr. Ennis: May the record show that——

The Court: No. Are the persons who have risen, the persons whom you have identified?

The Witness: I think so.

By Mr. Ennis.

Q. Where did you first see either one of those persons? A. In some pier in Brooklyn. 3386

Q. When? A. The first week in May in 1937.

Q. Which one did you see? A. Tom Sharkey.

Q. Was Klenofsky with him at that time? A. Yes.

Q. You saw both of them together? A. Yes.

Q. Did you have any conversation with them about unloading your New York merchandise? A. Yes, I told them——

Mr. Boudin: If your Honor please, I object to that.

The Court: Overruled.

Mr. Boudin: Exception.

The Court: He answered "yes."

Q. What was that conversation? 3387

Mr. Boudin: That is objected to.

The Court: Overruled.

Mr. Boudin: Exception.

The Court: You may answer.

A. I told him I already had a City man.

The Court: Well, did anybody say anything to you before you said that?

The Witness: Well, I just don't recall the exact conversation, because it has been so long ago, but I do recall telling him that I had a City man; and Sharkey told me how much money he and this other fellow could save me by them working there, and he would work for me there a week to show me.

Q. Sharkey said that? A. Yes; how much money he could save me that week; how much better men those two are.

3389 Q. Did you tell him what 807 man you had? A. Yes.

Q. After that conversation did they work for you? A. They worked that week.

Q. Did you have a subsequent conversation with them the next time you saw them? A. The next time I seen them was when they came to Bridgeton that Saturday that week.

Q. The Saturday the end of that week? A. The Saturday the end of that week, yes.

Q. Did you have a conversation with them then? A. Yes.

Q. What was said?

Mr. Boudin: That is objected to, if your Honor please?

The Court: Overruled.

3390 Mr. Boudin: Exception.

A. They came down there—they unloaded ten trucks that week—Sharkey and Red Klein unloaded ten trucks that week and came down and demanded $94.42, $9.42 for each truck, and I told him I would not pay it.

Well, he says, "We will go back without the money." They would not take nothing else; and finally after arguing they settled for $90; and I told him that was too much

money, because one man could unload easily by himself ten trucks in five days.

Q. Did you pay him the $90 there? A. I did, yes.

Q. Did you pay him in cash? A. I give him $10 in cash and $80 a check.

Q. Do you recall to whom you made out the check? A. To Sharkey.

Mr. Ennis: I request that this paper be marked a Government exhibit for identification.

(Marked Government's Exhibit 33 for Identification.)

3392

Q. Did you ever make out any other check to the order of Tom Sharkey? A. I don't remember any.

Q. I show you Government's Exhibit 33 for Identification. Do you recognize your signature on it? A. Yes.

Q. Is that the check you made out at that occasion? A. That is right.

Mr. Ennis: I offer this check in evidence.

The Court: Show it to counsel.

Mr. Boudin: That is objected to as immaterial, irrelevant and incompetent.

The Court: Overruled.

What is the date?

Mr. Ennis: May 8, 1937.

3393

(Government's Exhibit 33 for Identification received in evidence.)

Mr. Ennis: May I read the pertinent parts to the jury, your Honor?

The Court: Yes.

Mr. Ennis: This check is headed "Milton L. Lahn, Motor Transportation, Bridgeton, New Jersey, May 8, 1937, pay to the order of Tom Sharkey $80,

to the Cumberland National Bank of Bridgeton, Bridgeton, New Jersey," signed "Milton L. Lahn," and it has an endorsement on the back, "Tom Sharkey."

Q. Following that meeting with Sharkey and Klenofsky did you have any conversation with Kolb about it?

Mr. Boudin: Objected to as immaterial, irrelevant and incompetent.

The Court: Overruled.

Mr. Boudin: Exception.

3395 A. Yes, I had a conversation with Kolb.

Q. When was that? A. Within the following few days or so.

Q. Where was it? A. I just don't recall the exact spot, but he wanted——

Q. Just a minute.

The Court: Whereabouts? What state was it? New York or New Jersey?

The Witness: New York.

The Court: Whereabouts in New York State?

The Witness: I don't remember exactly.

The Court: What city?

The Witness: In Brooklyn I think.

3396 Q. What was said in that conversation?

Mr. Boudin: Objected to.

The Court: Overruled.

Mr. Boudin: Exception.

A. He wanted to know why I was using some other men, why he didn't get the work. So I told him one of my drivers came back and told me he got a better job somewhere else

and he quit. He said he didn't. And I told him who I had working for me, Klenofsky and Sharkey. He said, "If you keep using fellows like that"—I told him what experience I had with Sharkey and Red. He said that if I used fellows like that they would put me right out of business. I told him it was bad enough either way, and finally decided to keep on using Kolb.

The Court: Strike it out. After this conversation that you had with Kolb, did Kolb do any work for you?

The Witness: Yes.

3398

Q. Was there anything else said in that conversation other than you have stated? A. Outside of working conditions, just exactly I don't remember what it was.

Q. Mr. Lahn, do you know how much money you paid to persons other than your own drivers to unload your trucks in New York City between the 1st of January, 1937, and the 1st of June, 1938? A. Approximately——

Mr. Boudin: That is objected to unless the answer is yes or no.

The Court: I will sustain the objection in that form.

Q. Do you know how much you paid to Kolb during that period.

3399

Mr. Boudin: Objection.

A. Approximately——

The Court: Overruled.

Mr. Boudin: Exception.

The Witness: Approximately $2000.

Mr. Ennis: That is all.

3400 *Milton L. Lahn—For Government—Cross.*

Cross examination by Mr. Murray.

Q. Did you make deliveries at the Bush Terminal? A. Yes.

Q. Were you making deliveries there from the early part of 1936 up to the first part of June, 1938? A. Yes.

Q. Were you told at the Bush Terminal that they did not permit anyone to deliver there except union drivers?

Mr. Cahill: Objected to as immaterial.

The Court: Overruled.

A. No, sir.

3401 Q. Beg your pardon? A. No, sir, I don't remember anybody telling me that outside of an 807 man, maybe.

Q. Well, did they have platform men in the Bush Terminal who accepted loads as they came in? A. Yes.

Q. Did any platform man ever tell you that?

Mr. Cahill: Objected to as indefinite, vague and immaterial.

The Court: Overruled.

A. No.

Q. Where else did you make deliveries besides Bush Terminal in the Greater City of New York?

3402 I suppose for the record it better appear where the Bush Terminals are.

Mr. Murray: Yes, I will do that, your Honor.

Q. Where are the Bush Terminals? A. In Brooklyn.

Q. Just what are the Bush Terminals? A. Well, a lot of factories in there, and there is a bunch of buildings and a lot of factories and offices.

Q. What part of Brooklyn are the Bush Terminals in? A. Up near the river——

Q. Beg pardon? A. I don't know the exact location. North——

The Court: Well, it is on the waterfront?
The Witness: Yes.
The Court: Down by the 39th Street ferry?
The Witness: That is right.

Q. Between December of 1936 and June of 1938 did your trucks deliver glassware? A. Yes.

Q. What kind of glassware? A. Empty glass bottles.

Q. Can you tell me any of the houses that they delivered to? A. Fred Fear & Company.

3404

Q. Where was Fear's place of business? A. The foot of Joralemon Street in Brooklyn.

Q. Were you told there that that concern did not accept deliveries except by union men? A. No, sir.

Q. Where else did you deliver glassware? A. Wilbert Products.

Q. Where was their place of business? A. On East 139th Street in the Bronx.

Q. Were you told there—— A. No, sir.

Q. —that they did not accept deliveries except by union men? A. No, sir.

The Court: What was the name of that firm?
The Witness: Wilbert Products.

3405

Q. Now, how long did Klein and Sharkey work for you? A. I think one week.

Q. Did they work under your direction during that week? A. Not exactly.

Q. Well, did you direct them where they were to meet your trucks in advance? A. I don't recall the exact setup, whether they had a telephone some place we used to call or the drivers called them or we sent them a telegram.

Q. Do you recognize that paper (indicating) ? A. That is right.

Q. Did you send it? A. That is right.

Mr. Murray: Mark it for identification, please.

(Marked Defendants' Exhibit L for Identification.)

Mr. Murray: I offer it.

Mr. Cahill: No objection.

(Defendants' Exhibit L for Identification received in evidence.)

3407 Mr. Murray: It is a telegram, if your Honor please, dated April 30, 1937. May I read it?

The Court: Yes.

Mr. Murray: This is a telegram coming from Bridgeton, New Jersey, addressed to Thomas Sharkey, 19505 122nd Avenue, St. Albans, New York, "trucks Wilberts morning," signed Lahn.

Q. Now, what did "trucks Wilberts morning" mean? A. It meant the truck will be at Wilbert's in the morning.

Q. Was this a direction by telegram for Sharkey to meet the truck to unload it? A. That is right.

Q. Now I show you this paper dated May 2nd. Did you send that? A. That is right.

3408 Q. And another one dated May 3rd. Did you send that? A. That is right.

Q. And another one dated May 4th. Did you send that? A. Yes.

Q. And another one dated May 5th. Did you send that? A. Yes.

Q. And another one dated May 11th. Did you send that? A. (No answer.)

Q. No, pardon me. That was not sent by you.

Mr. Murray: May I have these four marked as one exhibit or would you rather——

The Court: No. M, N, O, P.

(Marked Defendants' Exhibits M, N, O and P for Identification.)

Mr. Murray: I offer them in evidence, if your Honor please.

Mr. Cahill: I would like to see them.

(Mr. Murray hands papers to Mr. Cahill.)

The Court: Is that May 2nd, 3rd, 4th and 5th?

Mr. Murray: Yes, your Honor.

Mr. Cahill: No objection.

3410

(Defendants' Exhibits M, N, O and P for Identification received in evidence.)

Q. The telegram that is dated May 2nd, "Truck Wilberts and Fear" addressed to Thomas Sharkey. What does that mean?

Mr. Cahill: I submit the exhibit speaks for itself, your Honor.

The Court: Well, I will allow the witness to state. We all know that telegrams are frequently condensed into a small number of words.

A. One truck at Fred Fear and one at Wilberts.

Q. Was this a direction by telegram for Sharkey to meet the truck there? A. That is right. 3411

Q. Then there is a telegram of May 4th: "One truck Wilberts; one truck Liberty Street ferry, 7 A. M." Was that a direction to meet those trucks? A. That is right.

Mr. Murray: I might say to the jury they are all similar telegrams of similar import.

Q. Now, was Klenofsky working with Sharkey at that time? A. Yes.

Q. Helping to unload? A. I imagine he was.

Q. Well now, after they had worked for a week did you send them their money? A. I didn't have a chance to. They came down to Bridgeton there to get it.

Q. Then did you ask them to work under-the-hat? A. No; I asked them to give me a day's work, which one man could handle them trucks.

Q. You had signed a union contract at that time, hadn't you, or up to that time or before that time? A. Yes; I was forced to.

Mr. Murray: May I have the latter part of the answer stricken out, if your Honor please?

3413 The Court: Strike it out.

Q. When you were talking with Klenofsky down in Bridgeton, at that time your contract was in force between the union and yourself, wasn't it? A. Yes, but the contract called——

Q. Was it, yes or no? That is all I asked. A. Yes.

Q. Now, did you only talk about a full day's work or the amount of money that was to be paid, or both? A. I said that one man could unload two trucks in a day, which would be 8 hours' work.

Q. So you paid them off, did you? A. Yes.

Q. They did not work for you any more, did they? A. They tried to.

3414 Q. But they did not, did they? A. They tried to.

Q. I am asking you if they ever worked for you any more? A. No.

Q. Did you ever pay them any more? A. They tried to collect though.

Q. Did you ever pay them any more, I asked you? A. No.

Q. Now, after that is it a fact that Kolb worked for you after the early part of May, 1937? A. Yes.

Q. And did you send the telegrams from time to time advising him where to meet your trucks? A. Kolb?

Q. Yes. A. No.

Q. Well, did you install a telephone in his house? A. We both installed a telephone in his house.

Q. Beg pardon? A. I paid half of it and Kolb paid half of it.

Q. And was it at your instance that the phone was put in Kolb's house? A. For both our convenience.

Q. And then after the middle of May, say, 1937, and up to June 1st of 1938, did you call Kolb from your place in New Jersey and tell him where to meet trucks? A. I did.

Q. And to unload them? A. I did. 3416

Q. And after about the middle of May, 1937, was Kolb the only member of 807 who worked for you? A. I don't think so.

Q. Was there anyone else that did any work for you that is identified, so far as you know, with Local 807? A. Yes.

Q. Who? A. I don't remember the exact names.

Q. When was that? A. Right along.

Q. Right along? A. Yes.

Q. You mean that he worked while Kolb worked for you? A. That is right.

Q. You don't know his name? A. I don't exactly know his name, no, because Kolb hires him and I sent Kolb the check for him.

Q. But he worked with Kolb by an understanding be- 3417 tween you and Kolb, didn't he? A. That is right.

Q. You never paid that man except through Kolb, did you? A. To the best of my knowledge I did.

Q. Well, did you always pay Kolb by check? A. Yes.

Q. And did the payment to Kolb include what was to be paid to the man who worked with Kolb? A. It was separate checks, I think.

3418 *Milton L. Lahn—For Government—Cross—Redirect.*

Q. Well, have you got the checks? A. I have got them back in Bridgeton.

Q. But not here? A. No—oh, you mean from June 1, 1938?

Q. No. A. Up till June 1, 1938?

The Court: Up till June 1, 1937, you are talking about, isn't it?

Mr. Murray: No, June, 1938, your Honor.

The Court: 1938?

Mr. Murray: Yes.

The Witness: I don't know if it was separate checks. I think I paid them separate checks; I haven't looked them over for several years.

3419

Q. But your recollection is you paid Kolb, and out of the proceeds that you paid Kolb he paid the other man; is that your recollection? A. Well, I think so.

Mr. Murray: That is all.

Mr. Cahill: We have checks if Mr. Murray wants them, your Honor.

The Court: Does counsel for any other defendant desire to cross-examine?

(No response.)

Mr. Ennis: I request that this be marked Government's Exhibit for Identification.

3420 (Marked Government's Exhibit 34 for Identification.)

Redirect examination by Mr. Ennis.

Q. I show you Government's Exhibit 34 for Identification and ask you whether that refreshes your recollection concerning the matter Mr. Murray questioned you about, making out checks to other persons? A. Yes.

Q. Is that your signature on that paper? A. Yes.

Q. Do you remember making that check out? A. Yes, sir, I remember signing that check.

Mr. Ennis: I offer it in evidence.

Mr. Murray: I have no objection.

(Government's Exhibit 34 for Identification received in evidence.)

The Court: What is the date?

Mr. Ennis: September 14, 1937. I request this paper to be marked for identification.

The Court: Yes.

3422

(Marked Government's Exhibit 35 for Identification.)

Mr. Ennis: May I read this check?

The Court: Yes.

(Mr. Ennis read Government's Exhibit 34 to the jury.)

Q. Mr. Lahn, I show you Government's Exhibit 35 for Identification. Does that refresh your recollection on the subject of other payments to other 807 men for unloading your trucks? A. Yes.

Q. With your recollection refreshed, do you recall the name of any other 807 man to whom you paid money for unloading your trucks? A. Well, one of them was Ed Weinheimer; another was a fellow named Pelker.

3423

Q. Did you ever see this man Pelker or Ed Weinheimer? A. I don't recall seeing him. I might have seen him, but I don't recall it. This money was mailed to him or wired to him.

The Court: What was the last name?

Mr. Ennis: Pelker, William Pelker. I offer this in evidence.

Mr. Murray: I have no objection.

3424

(Government's Exhibit 35 for Identification received in evidence.)

The Court: What is the date of it?

Mr. Ennis: April 27, 1937. May I read this, your Honor?

The Court: Yes.

(Mr. Ennis read Government's Exhibit 35 to jury.)

Mr. Ennis: I request this paper to be marked a Government's Exhibit for Identification.

The Court: Mark it.

3425

(Marked Government's Exhibit 36 for Identification.)

Q. Mr. Lahn, will you read Government's Exhibit 36 for Identification (handing paper to witness)? A. "This is to"——

Q. Just a minute. You just read it and I will ask you a question. A. Oh (examining).

Q. Does that refresh your recollection on the subject of payments to other 807 men? A. Yes.

Q. Do you know the name of another 807 man to whom you made such payments? A. Venditti.

Q. Do you recall how you paid him? Did you hand it out personally in cash? A. No.

Q. Do you recall in what manner you paid him? A. I

3426 think that was paid through Fred Kolb.

Mr. Ennis: I offer this in evidence.

Mr. Murray: I have no objection to the payments on this, if your Honor please, but I certainly object to the writing above the payments (handing to court).

By the Court.

Q. In whose handwriting is that part of this paper which appears to have been written in ink? A. That looks like Kolb's handwriting.

Q. And do you know when that part which was written in ink was written on the paper with respect to the time that the part in lead pencil was written? A. I could not say.

The Court: I will exclude the paper.

By Mr. Ennis.

Q. Were both parts of that writing, the ink and the pencil, on there when you first saw it? A. If I recall right—— 3428

The Court: No, just answer that question.

A. Yes.

Q. They both were on when you saw it? A. Yes.

Q. Do you remember when you first saw it? A. Some time in October is when I received it.

Q. Who gave it to you? A. I think it was mailed to me by Fred Kolb.

Q. You received it in the mail? A. Yes.

Q. Did you have any discussion about it with Fred Kolb? A. Yes. I don't remember exactly, but I think I did.

Q. And do you recall what was said? 3429

Mr. Boudin: I object to that.

The Court: I will allow it.

Mr. Boudin: Exception.

A. I don't remember the exact words, but there was some discussion about it.

Q. Well, do you recall the substance of the conversation? A. If I remember right——

The Court: No, we don't want any "ifs". You are under oath. Tell what was said.

A. Well, I could not say exactly.

Q. But you do recall you had some conversation— A. Yes.

Q. —about that with Fred Kolb? A. Yes.

Q. And you do know that that is his handwriting?

Mr. Murray: Now, I object, if your Honor
3431 please. The witness did not say any such thing.

The Court: Yes, I will sustain the objection. It is leading and it is objectionable in form, because counsel is testifying to the fact and merely asking the witness to confirm it.

Q. Is that Kolb's handwriting?

Mr. Murray: I object on the ground that it has been already answered.

The Court: I will sustain the objection.

By the Court.

Q. Did you ever see Kolb write? A. Yes, sir.

3432 Q. And are you familiar with his handwriting? A. Yes, sir.

Q. How many times have you seen him write? A. Once a week for the last three years.

Q. And are you able to state with reasonable certainty whether the part of the paper in ink is in the handwriting of Fred Kolb? A. Yes, sir.

Q. Is it? A. Yes, sir.

Mr. Ennis: I offer it in evidence, your Honor.

Mr. Boudin: It is objected to, if your Honor please.

Mr. Ennis: My point, your Honor, is——

The Court: Well, my point is I want to know whether the ink-written part was on there when the part in lead pencil was written on there, or if the ink part was put on afterwards. Nobody can bind me by writing something on a letter after I have signed it. That is the point that I am trying to make plain here. If something is on a paper when I put my name on there, I am bound by it; but if I write a letter and somebody puts something on it afterwards, I am not bound by it unless you can show that I knew it was on and acquiesced in it. It is my understanding that Kolb is not a defendant in this case. 3434

Mr. Ennis: That is true, your Honor. It is our contention on the testimony that he was in this combination.

Mr. Boudin: If your Honor please, I would like to say that it would not make any difference, because this is clearly something that is against somebody even if there had been a combination, of which there is no evidence.

The Court: Well, as I understand it, Mr. Murray says he has no objection to the fact that the money was paid. 3435

Mr. Murray: None whatever, nor the receipt, if your Honor please, showing the payment of the money. But my objection, as your Honor knows, goes to the writing in ink, and I shall concede that it was paid.

Mr. Ennis: If the Court please, if Mr. Murray has no objection to the pencil writing——

Mr. Murray: None whatever.

Mr. Ennis: —we offer the writing in ink as a communication between Kolb and this witness. Certainly if Kolb told him what is here in ink, that your Honor would permit that conversation to be testified to, and therefore we offer the ink without the pencil writing.

The Court: Well, I haven't any objection to your offering the ink part without the pencil part if you want to do it. The point I am trying to make is you cannot offer the two things associated together.

Mr. Boudin: If your Honor please, we object to
3437 the ink part being offered separately. I do not think they are admissible either separately or together.

Mr. Cahill: Judge, may I address the Court?

The Court: Yes.

Mr. Cahill: Let us just assume a hypothetical case where a single writing, a single sheet of paper was half written by one conspirator and another half of the same page written by another.

The Court: Yes.

Mr. Cahill: They are both during the pendency of the conspiracy and in furtherance of the conspiracy.

The Court: Yes.

Mr. Cahill: Wouldn't both parts of the writing
3438 be admissible even though they did happen to occur on the same page?

The Court: I think so.

Mr. Cahill: That is my belief. As I understand it the top part is identified as having been written in Kolb's handwriting——

The Court: The difficulty is that your hypothetical question is one where two conspirators joined in writing a document.

Mr. Cahill: I do not necessarily put it as joined.

The Court: That is what was said.

Mr. Cahill: I will stand by that.

The Court: Let the stenographer repeat it.

(Portion of Mr. Cahill's statement referred to read.)

The Court: Stop right there. One party here is not a defendant in this case.

Mr. Cahill: Yes, if your Honor please. I do not contend in my hypothetical case that they are defendants.

The Court: You are asking me to assume a hypothetical case that differs from the case that I have 3440
before me here. That is what I am trying to make clear to you.

Mr. Cahill: If your Honor please, it may be that you do not agree with the Government's contention, but our contention is that on the proof of this witness shown here that Kolb is entitled to be considered as a member of this conspiracy. Now, your Honor may differ with us on our contention, but in so contending I feel that I have put an analogous suppositious case.

The Court: I will allow in evidence a communication between this witness and Kolb, or from Kolb to this witness, just the same as I would allow in evidence a conversation. The difficulty is that you
produce a paper here that has on it something else 3441
and the name of somebody else, and they are linked together in a way that might lead to some confusion, possibly some prejudice. I will sustain the objection now and I will take the matter under consideration and you may renew it Monday morning.

Mr. Cahill: All right. May I make this suggestion? Could we have it photostated in halves and offer the two halves separately?

The Court: No. You are asking me to decide the matter before I think about it.

Mr. Cahill: I am offering that as a suggestion.

The Court: No. If I decide it in your favor you would not have to do that. There isn't any use in taking two bites of a cherry.

Q. Mr. Lahn, I understood you to say when Mr. Murray was cross-examining you that you spoke to the defendants Sharkey and Klenofsky in Bridgeton at the time this so-called contract was in effect. Do you recall that question and answer? A. Yes.

3443 Q. Now on the question of this so-called contract being in effect, did you sign that paper in Brooklyn of your own free will?

Mr. Boudin: I object to that.

Mr. Maguire: I object to that.

The Court: Sustained.

Q. Going back to that morning in Brooklyn when you had a conversation with Kolb and Hickey, did you say anything to them on that subject?

Mr. Boudin: If your Honor please, that has already been answered.

The Court: I think it has.

Is there anything that you said on that occasion
3444 that you have not heretofore said?

The Witness: I don't recall any instance. There has probably been a lot said, but I just can't remember.

Q. You don't recall anything in addition to what you have already testified that you said on that occasion? A. Oh, there has been a lot said that day but I just can't recall exactly.

Mr. Ennis: That is all.

Recross-examination by Mr. Murray.

Q. Let me ask you: Did you take the contract home with you? A. I don't remember taking it back with me.

Q. Well, isn't it a fact that you mailed it in from Bridgeton? A. Yes, but I had to sign it that day, though.

Q. You had to sign it that day? A. Yes.

Q. And then you took it home? A. I don't remember exactly how it was, but I think Mr. Hickey took one contract and I took the other one and mailed it back to him. Some recollection like that. I don't remember exactly what it was.

Q. My question is this: Didn't you meet in Brooklyn and talk about signing a contract? A. Yes, sir. 3446

Q. And didn't you testify that you told Hickey that you would have to find out whether you had an authorization to sign it? A. Yes.

Q. Well, didn't you take it home? A. But I had to sign it first.

Q. You mean you signed it first and after you signed it you told Hickey that you would have to find out whether you had an authorization to sign it? A. No, sir. I told Hickey that first, but he insisted that I sign that contract that day.

Q. And then you took it home? A. I don't remember that exactly.

Q. Did you deliver it to Hickey the day you signed it? A. I am pretty certain that he took one copy with him. 3447

Q. I am talking about the original that you signed. A. I think I did.

Q. You took it home, didn't you? A. I don't know whether I took the original home or not.

Q. Well, don't you recollect having kept it for about a week before you mailed it to the union? A. No, sir.

Q. Did you talk to anyone in Bridgeton before this contract came into the possession of the union? A. Before I went up there?

Q. No. After you met Hickey. A. I talked to him before that; I talked with somebody after that too.

Q. Did you talk with someone in Bridgeton? A. Yes.

Q. And after you talked to someone in Bridgeton isn't it a fact that a week later you mailed the contract into the union in New York? A. I don't recall that.

Q. Would you say it is not a fact? A. I wouldn't want to say it is and I wouldn't want to say it isn't.

Mr. Murray: That is all.

Redirect examination by Mr. Ennis.

3449 Q. With whom did you talk in Bridgeton? A. To my attorney.

Q. What was the conversation?

Mr. Boudin: Objected to.

The Court: Sustained.

Mr. Ennis: If the Court please, Mr. Murray has asked him whether he had such a conversation.

The Court: And you asked him who the person was. Mr. Murray didn't go into the nature of the conversation which he had. You have disclosed who the person is and that person, I suppose, may be available to be called as a witness if you want to, but the necessity would exist here for an opportunity to examine him. You don't claim he is a

3450 co-conspirator, do you?

Mr. Ennis: Not at all, your Honor.

The Court: Well, how is hearsay testimony of that character admissible against any defendant?

Q. Did you sign more than one so-called contract in the restaurant with Hickey on that occasion? A. I think I signed one.

Q. Just one? A. I think so.

Q. Did you have trucks waiting to unload in New York City while you were having that conversation? A. Yes, sir.

Mr. Boudin: Objected to on the ground that it has already been inquired into.

The Court: Yes. He said yes. However, it won't do any harm to let the answer stand, and I will overrule the objection.

Any further cross-examination?

(No response.)

(Witness excused.)

3252

JOHN W. HUGHES, residing at 217 South Pine Street, Bridgeton, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Hughes, where are you employed? A. Milton L. Lahn.

Q. Will you keep your voice up, please, so the last gentleman in the jury box and the counsel can hear everything you say. Are you an over-the-road driver? A. Yes.

Q. Are you a member of any union? A. 590.

Q. Is that in Vineland, New Jersey? A. Right.

3453

Q. Is that a local of the International Brotherhood of Teamsters? A. Yes, sir.

Q. When did you join that union? A. October 1, 1935.

Q. Now, how long have you been employed by Lahn? A. Eight years.

Q. Do you know a man named Thomas Sharkey? A. I think so.

Q. Do you know a man known as Red Klein? A. I think so.

Q. Will you stand up and see if you find those two men in this courtroom. A. I see Thomas Sharkey.

Q. Where is he? A. In the second row, the fifth man.

Q. From which end? A. From this end (indicating).

Q. From the end nearest the bench? A. That is right.

Q. Do you see Klein? A. I believe not.

Q. Will you look around again. A. Right in the front row I guess he is.

Q. Beg pardon? A. In the front row.

Q. [illegible] what seat? A. Fourth.

Q. [illegible] om which end? A. This end (indicating).

3455 Mr. Marks: May the clerk call the names of Thomas Sharkey and Abraham Klenofsky?

The Court: Thomas Sharkey and Abraham Klenofsky.

(Two men stood up.)

Q. Are those the names of the two men you identified? A. Yes.

Q. Do you remember the first time you saw Sharkey? A. I think the spring of 1937.

Q. Where? A. East 138th Street in the Bronx.

Q. Do you remember seeing him on one occasion in Bridgeton, New Jersey? A. Yes.

Q. Was he with anyone? A. Yes.

Q. With whom? A. Red.

3456 Q. With whom? A. Red.

The Court: Is that 1937 or 1938?

Mr. Marks: He said the spring of 1937, your Honor.

Q. You saw him with Red Klein? A. Yes, that is right.

Q. About what time was that? A. On a Saturday afternoon.

Q. Can you remember what month? A. It was in the spring. I don't remember exactly what month.

Q. Did you have any conversation with him there? A. No.

Q. Do you remember seeing either or both of them shortly after that in New York City? A. I seen them again a week or so after, one or two weeks after.

Q. Where? A. At 24th and Eleventh Avenue.

Q. Now, did you have a truckload of merchandise in New York that day? A. Yes.

Q. Where was the load consigned to, if you remember? A. I think the British-American Winery at the Lehigh Starrett Building.

3458

Q. Do you know where the Lehigh Starrett Building is? A. 26th and West.

Q. When you saw Sharkey and Klein had the load been delivered? A. Yes.

Q. Did you have any pickups in New York City that day? A. I picked up a load at the same place.

Q. Had the load already been picked up when you saw Sharkey and Klein that day? A. Yes.

Q. Where were you bound for when you saw them? A. Home.

Q. Where were you when you first saw them? A. I was just turning around the corner of 24th Street off Eleventh Avenue.

Q. That is, you were driving your truck there? A. Yes.

3459

Q. Where were they when you first saw them? A. They drove alongside of me in a Ford coupe.

Q. Will you try to speak a little louder. A. They drove alongside of me in a Ford coupe.

Q. Who was the first one that spoke? A. Thomas Sharkey.

Q. Was he still in the Ford coupe when he spoke to you? A. After he told me to pull over.

Q. Were the coupe and your truck in motion or had either of them stopped when he first spoke to you? A. Well, they were both stopping at the time.

Q. What did he say?

Mr. Boudin: I object to it.

The Court: Well, he has already told us what he said.

Mr. Boudin: I didn't hear it.

The Court: He told him to pull over. Is there anything further you wish to show?

Mr. Marks: There is, your Honor.

3461 The Court: Well, bring it out. I sustain the objection to that question on the ground that it has been previously answered.

Q. What did you say then?

Mr. Boudin: I object to that, if your Honor please.

The Court: Overruled.

Mr. Boudin: Exception.

A. I pulled over and stopped and he asked me where I had been.

Mr. Boudin: One moment. There is no question.

3462 The Court: I think there is.

Mr. Boudin: Does the question call for a conversation?

The Court: It does.

Mr. Boudin: I respectfully object to that.

The Court: Overruled.

Mr. Boudin: Exception.

The Court: Proceed.

Q. Now will you tell us the whole conversation, Mr. Hughes. A. He asked me to pull over and I pulled over and stopped.

The Court: You were asked what you replied to him. That was the question. Did you make any reply?

The Witness: He asked where I had been. I told him.

The Court: No. Did you make any reply to him when he told you to pull over?

The Witness: No. I pulled over.

Q. Now, was there a conversation after that? A. Yes. 3464

Q. Will you tell us the conversation. He asked me where I had been.

Mr. Boudin: I object to that statement.

The Court: Overruled.

A. I told him I had been to Lehigh Starrett Building and he said, "Where is your bills of lading?" And I took them out of my pocket, and he took them and looked at them and gave them back to me and said, "Somebody is going to pay me for the day's work."

Q. What? A. "Somebody has got to pay me for the day's work." I said, "You will have to get in touch with the boss." So he went away.

Q. Who was present during that conversation? A. There 3465 was Red Klein and two other fellows who I didn't know.

Q. Who did all the talking? A. Thomas Sharkey.

Q. Well, was there anything else said before they went away? A. No, that is all that was said before they went away.

Q. Was there anything else done there before they went away? A. No, nothing else done.

3466 *John W. Hughes—For Government—Direct.*

Q. Did they ask you to do something?

Mr. Murray: I object to it as leading and suggestive.

The Court: Yes or no.

The Witness: No, they didn't ask me to do anything.

Q. Did you give them anything before they went away?

Mr. Boudin: Objected to.

A. No.

3467 The Court: I don't assume that it is necessary for the Court to rule.

Mr. Boudin: No.

Q. Did they come back? A. Yes.

Q. How soon after they left? A. Probably five minutes.

Q. Did all of them go away? A. That I really couldn't say.

Q. Now, when they came back did you have another conversation?

The Court: Well, who came back?

The Witness: Thomas Sharkey came back.

Q. Who came with him? A. The four were there again together.

3468 Q. The same four? A. Yes.

Q. Red Klein among them? A. Them two I know, but I wouldn't say that the others were the same two or not.

Q. Did you have another conversation when they returned? A. They said——

Mr. Boudin: One moment.

The Court: Yes or no.

The Witness: Yes.

Q. Tell us that conversation.

Mr. Boudin: Objected to.
The Court: Same ruling.
Mr. Boudin: Exception.

A. They wanted a day's pay.

The Court: Who said that?
The Witness: Thomas Sharkey.

Q. How much? A. $9.42, and at that time a car drove up. He said it is one of the delegates. He went to talk with him. 3470

Q. Who said that? A. Thomas Sharkey.

Q. And he left? A. He left and went to talk to the delegates. He pulled into the curb ahead of my truck. What was said I don't know. Then he came back.

Q. Sharkey came back? A. Sharkey came back.

Q. Yes? A. And told me I had to sign a slip for a day's pay.

Q. He told that to whom? A. Sharkey told me I had to sign a slip for a day's pay, which I did.

Q. Just what did you sign? A. An ordinary piece of paper.

Q. Do you remember what you wrote on it? A. Not exactly I don't.

Q. Do you remember approximately what you wrote on it? A. Just a receipt that he unloaded the load. 3471

Q. That who unloaded the load? A. Thomas Sharkey.

Q. What did you do with that piece of paper? A. He kept it.

Q. Did he unload the load? A. No.

Mr. Marks: That is all.

Cross-examination by Mr. Murray.

Q. You didn't give him any money, did you? A. No money.

Q. He didn't ask you for any money, did he? A. Yes.

Q. When did he ask you for the money? A. Right after he found out I had unloaded.

Q. Beg pardon? A. Right after he found out I had unloaded.

Q. Did you tell him to get in touch with the boss? A. That is right.

Q. Do you know whether or not he did get in touch with the boss? A. I don't.

3473 Q. Did you ever hear any more about the incident afterwards? A. No, sir.

Q. Do you know whether or not at that time your boss had signed a contract with Local 807? A. I do not.

Q. Did you have a helper at that time? A. Yes, sir.

Q. Well, before that did your boss tell you that he had signed with Local 807? A. Not that I can remember.

Q. Do you know whether or not your boss had at any time signed a contract with Local 807?

Mr. Cahill: I object to it as already asked and answered, and I object as to the time.

The Court: Overruled.

Mr. Cahill: At any time, your Honor.

The Court: All right. He can say whether his

3474 boss ever told him that.

Mr. Cahill: As I understand the question it was signed at any time, your Honor.

The Court: Well, all right.

Mr. Cahill: That might go beyond the period. That is my only point.

The Court: If Mr. Murray wants to go beyond the period that is his lookout. It calls for a yes or no answer.

Do you understand the question?

The Witness: I don't know when he signed the contract.

The Court: Well, did he ever tell you at any time that he signed a contract?

The Witness: Yes, he told me later.

The Court: Now, do you know when it was that he told you?

The Witness: No, I do not.

The Court: Well, I guess we haven't gone beyond the time.

Q. What date was it that you had this conversation that you have just related? A. I don't know the date, sir. It was in the spring of the year. 3476

Q. Was it after April 19th of 1937? A. I think so.

Q. Have you any idea how much later it was? A. I know it was somewhere in the spring of the year. I don't know exactly what month.

Q. Will you look at this Exhibit 32 in evidence, dated April 19, 1937, and tell us whether or not that refreshes your recollection as to whether it was after April 19th or before that you had this conversation. A. I really still don't know because I wasn't running here very often then.

Mr. Murray: That is all.

Mr. Marks: That is all.

(Witness excused.) 3477

The Court: Next witness.

3478 *William F. Betts—For Government—Direct.*

WILLIAM F. BETTS, residing in Milton, Delaware, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mr. Betts, will you please keep your voice up so that the gentlemen at this table and the last gentleman in the jury box can hear everything you say? A. Yes, I will.

Q. Where are you employed now? A. By the Reed Trucking Company.

Q. Where are they located? A. At Milton, Delaware.

3479 Q. When did you go to work for the Reed Trucking Company? A. In 1937. The first part of 1937.

Q. Where does the Reed Trucking Company haul? A. Where do they haul?

Q. Yes. Between what points? A. Well, they haul New York, Baltimore and Richmond.

Q. In the early part of 1937 were you on the New York run? A. I was.

Q. Did you haul any particular type of commodity? A. Mostly canned goods.

Q. Were there any warehouses in New York you hauled to more than others? A. No. I hauled around to several different ones; no particular one.

Q. Which particular ones? Suppose you name a few. A. I haul to Seeman Bros., Utility Warehouse on Greenwich Street; I haul to Embassy Grocery Supply on Greenwich Street; I haul to Francis Leggett down on Eleventh Avenue.

3480

The Court: What was the last one you mentioned?

The Witness: Francis Leggett.

The Court: Brooklyn?

The Witness: No; it is on Eleventh Avenue.

The Court: Eleventh Avenue?

The Witness: Yes.

Q. In the early part of 1937, Mr. Betts, who unloaded your trucks at these warehouses? A. Well, most of the time it was always union men; supposed to be union men.

Q. What union men? A. Local 807.

Q. When you first began to come up to New York did the local union men unload you? A. No. I was unloading my trucks myself.

Q. When you drove your truck up did you usually have several drops in one trip or did you usually have all your load for one place? A. Usually unloaded it all at one place most of the time; practically all the time.

Q. Practically all the time? A. Yes.

Q. Now, when you had a load which was consigned 3482
entirely to one place how long did it usually take to unload that load? A. Well, at the most not over two hours.

Q. Do you remember approximately when the local union men began to do any work on your truck? A. Some time in the summer of 1937.

Q. Do you remember the first such occasion? A. The first place you mean?

Q. Yes. A. That I was held up? Well, the first place that I have in mind was around here at the Embassy Grocery Supply on Greenwich Street.

The Court: All right, we will take a recess now. (Short recess.)

By Mr. Marks. 3483

Q. Now, I believe you said last, Mr. Betts, that the first time you met a local union man was at the Embassy Grocery Company? A. That is right.

Q. On Greenwich Street? A. That is right.

Q. Can you fix the time of that meeting? A. Well, it was some time in the summer of 1937; I would say July or August; I do not have any date of it any more than that.

Q. Did you see the man first before or after you began to unload your truck? A. Well, I had started unloading the truck.

Q. Do you remember how much of the load you had gotten off? A. I had about 100 cases off.

Q. Well, about what percentage of the load is that or was it? A. Well, it is not a third of the load; it would not be quite a third of the load.

Q. A little less than a third? A. A little less than a third of the load.

Q. Do you remember how long it took you to unload the 100 cases? A. Not over a half hour at the most.

3485 Q. Now, where did you first see this man? A. He came up to the truck, up to my truck.

Q. Was he alone? A. No, he was not alone at that time.

Q. Do you know his name? A. Not at that time I didn't know his name.

By the Court.

Q. Did you find it out afterwards? A. Yes, I found it out afterwards.

Q. Did you ever see the man again? A. Not any more I didn't, no.

By Mr. Marks.

3486 Q. What was his name? A. Waskiewicz.

Q. Do you know how to spell that? A. No, I don't.

Q. Will you stand up in the court room, Mr. Betts, and tell us if you see that man here? A. (Standing) I see one that looks like that man.

Q. Where is he? A. Sitting back there next to the wall (indicating).

Q. In the back row? A. About sixth from this end.

Q. Suppose you tell us exactly from your right what seat he is in. A. He is in the back row, about sixth from the end; sixth man from the end.

Mr. Marks: May the clerk call the name Peter Waskiewicz?

The Court: Yes.

The Clerk: Peter Waskiewicz.

(A man stood.)

Q. Is that the man that is standing? A. That is the man that came to my truck.

Q. All right, sit down. How many men were with him when he came up? A. Well, there was two besides him. 3488

Q. Did you have a conversation with them? A. No, not any more than he wanted to unload my truck.

Mr. Boudin: Just a moment. I object to that. The question calls for a yes or no answer.

The Court: Well, he said no. I will sustain the objection.

Q. Did you have a conversation with him? A. I did, yes.

Q. Well, tell us what was said by all the people there.

Mr. Boudin: I object to that.

The Court: Overruled. 3489

Mr. Boudin: Exception.

A. Tell what was said?

Q. Yes. A. He came up and wanted to know if I had a City man on the truck; and I said, "No, I don't have; I don't think I have to have one; I unload my own truck." He said, "You have to have one to get unloaded here; you have to have a union man, 807." So I told him I didn't

think I did; and I talked with him a while, and I went on in and saw the receiving clerk and had a talk with him, and then I came on up to the office up here.

Q. When you say "up here," where do you mean? A. Well, up in one of these offices here in this building.

Q. In this building? A. That is right.

Q. Whom did you come up here with? A. With that same man, that union man.

Q. You mean the man that you just identified in court? A. That is right, the man I just identified in court.

Q. What office did you go to in this building, do you remember? A. I don't remember; I don't recall, at the

3491 time.

Q. Do you recall whether it was the F. B. I. office? A. I think it was the F. B. I. office, yes.

Q. Did you see someone there? A. Yes.

Q. Do you remember whom you saw? A. I don't remember whom I saw now, no.

Q. Did Waskiewicz go into the office with you? A. Yes, he went in the office.

Q. And did you have a conversation in the office with someone? A. Yes.

Q. Do you know whether or not he was a special agent of the Federal Bureau of Investigation? A. I do not, no.

Q. What was the conversation in the office, do you remember?

3492

Mr. Boudin: I object to that.

The Court: I will take it as against the defendant Waskiewicz.

Mr. Boudin: Exception.

Q. Do you remember the conversation? A. Well, just talked in there, and he told the people in the office that I did not have a City man on the truck, that I was supposed to have one.

The Court: Who said that?

The Witness: Waskiewicz.

The Court: All right.

A. (Continued) He said I did not have a City man on the truck and they told him I did not need one; so they called up somebody, I don't know who, and then they told me to go back and unload the truck, and they told him not to interfere with me while I was unloading that truck, he or any other 807 man; that if he did he would get himself in trouble. So I goes on back and unloads my truck.

Q. Did they say anything else to Waskiewicz before you left? 3494

Mr. Boudin: That is objected to.

The Court: I will allow that.

Mr. Boudin: Exception.

A. Well, they told him not to interfere with me while—

Mr. Murray: Just a minute. Your Honor, might I state a further basis of objection?

The Court: Yes.

Mr. Murray: I object on the ground that it does not appear here that any F. B. I. man had any authority to direct any member of Local 807 how they should conduct themselves in the premises; that it is not binding on the defendants.

The Court: I am not taking it as any evidence 3495
of the fact that any F. B. I. man said anything, let alone had any authority to say anything; but I am merely taking it as some evidence of the fact that somebody told the defendant Waskiewicz which may or may not have had any reasonable effect upon the course that he pursued.

Mr. Murray: If your Honor please, I respectfully except.

The Court: I am not receiving it as against any defendant except the defendant Waskiewicz. Proceed.

Mr. Marks: May we have the last question and answer read?

The Court: Yes.

(Question and answer read.)

A. (Continued) Well, they told him not to interfere with me while I was unloading that truck, or any other 807 man. They said, "If you do you are liable to be arrested."

3497 Mr. Murray: Now, if your Honor please, I move to strike out the answer as irrelevant and prejudicial.

The Court: Strike out after "interference with me while I was unloading that truck."

Mr. Marks: If your Honor please, may I be heard on that for a moment?

The Court: No.

Mr. Marks: That was part of the conversation.

The Court: I heard it.

Mr. Marks: I think it goes to the knowledge of the defendants, Judge.

The Court: Well, you may think so, but the Court does not think so. It is disposed of, so far as
3498 I am concerned.

Q. Do you remember any further part of that conversation? A. No more than I went back and unloaded——

Mr. Murray: If your Honor please, I take it that that calls for a yes or no answer.

The Court: Yes. You may answer yes or no.

By the Court.

Q. Have you told us all the conversation that you remember?

The Court: I suppose you are referring now to the conversation in this building?

Mr. Marks: Yes, sir.

The Witness: What was the question?

By Mr. Marks.

Q. Have you told us all of the conversation that took place in this building in the F. B. I. office between you 3500
and some other person and the defendant Peter Waskiewicz?

The Court: That you remember.

A. All that I remember?

Q. Yes. A. Yes, all that I remember.

Q. Did you leave the building with Waskiewicz? A. I did.

Q. Where did you go? A. Went on back to my truck.

Q. Who unloaded your truck? A. I did.

Q. Did you pay Waskiewicz anything? A. No, sir, not at the time.

Q. Do you remember whether after that you ever met any local union men in New York City? A. After that? 3501

Q. Yes. A. Yes, I have.

Q. Between the time of this first occurrence that you have just told us about and June 1, 1938, about how often did you come into the city on an average? A. Well, on an average of once a week.

Q. Now, can you tell us about how often in your trips into the city you met local union men?

Mr. Boudin: I object to that as calling for the witness' conclusion, identifying somebody as a local union man who may or may not be.

The Court: I will sustain the objection as to the form of the question.

Q. About how often during the period that I have just mentioned did you not unload your own truck?

Mr. Boudin: That I object to on the ground that it assumes something that is not in evidence.

The Court: I think that is correct. You may
3503 ask this witness on how many subsequent occasions that he came into New York to unload a truck he saw somebody; and find out from him where these places were, and when, and whom he saw and whether he knew who the persons were, and what steps, if any, he took to ascertain who they were.

Mr. Marks: Thank you, your Honor.

Q. Were there occasions after this first meeting that you have described to us when you did not unload your own truck in New York City? A. Around at Seeman Bros.

Q. I say, were there such times? A. Yes, there was.

Q. Now, about how many such times between the time that you have just described and June 1st, 1938? A.
3504 Around how many times?

Q. Yes. A. Well, I would say a dozen times anyhow.

Q. Can you tell us now about how many such times there were with respect to the total number of trips you made into New York City during the same period? A. No; I can't tell you exactly how many times.

Q. Well, do you understand my question. Do you understand the question, Mr. Betts? A. No, I don't.

Q. Well, I will try to rephrase it. You say that between the time that you met Peter Waskiewicz and June 1st, 1938, you made an average of about one trip a week into New York City? A. About that, yes.

Q. And you say there were times during that period when you did not unload your own truck? A. There was times, yes.

Q. Now, I say, during that same period about how many times did you not unload your truck compared to the total number of trips you made into the city?

Mr. Boudin: Your Honor, I respectfully submit that it has already been answered. The rest is a matter of calculation. 3506

The Court: Overruled.

Mr. Boudin: He said a dozen times, once a week over a certain period of time. It is a matter of calculation purely.

The Court: You may answer.

Mr. Boudin: Exception.

A. Not over half of the times.

Q. Well, would you say it was about half of the times? A. About half of the times, yes.

Q. Do you remember the second occasion, or, rather, the first one after you met Waskiewicz? A. Around at Seeman Bros., I believe.

Q. About when? A. Well, it was sometime in 1937, July or August. 3507

Q. How many people did you see there?

By the Court.

Q. How long was this after the first occasion when you came to this building with the defendant Waskiewicz? A. Not much over a week, I would not say; about one week.

By Mr. Marks.

Q. How many people did you see there? A. Three of them.

Q. Do you know now who any of them were? A. No, I do not.

Q. Did any of those men show you anything?

Mr. Boudin: I object to that.

The Court: Overruled.

Mr. Boudin: Exception.

A. Did they show me anything?

3509 Q. Yes. A. Yes, they showed me their book.

Mr. Boudin: One moment. I move to strike out everything after the answer "yes."

The Court: Strike it out.

Q. What did they show you?

Mr. Boudin: That is objected to.

The Court: Overruled.

Mr. Boudin: Exception.

Q. What did they show you, Mr. Betts? A. They showed me their book, union book.

Q. Did you look at it? A. Yes.

3510 Q. Did you see what it was? A. Yes, I seen it was a union book.

Q. Did you see anything on it? A. Yes——

Mr. Boudin: That is objected to.

The Court: Overruled.

Mr. Boudin: That is objected to as attempting to get in evidence contents of a document that is not in evidence.

The Court: I have ruled.
Mr. Boudin: Exception.

Q. What did you see on the book?

Mr. Boudin: Same objection.
The Court: Overruled.
Mr. Boudin: Exception.

A. Well, in the book—I looked in the book and I seen that number 807, dues paid up, and that is all I know about the book.

Q. Did you look at the books of each of the men? A. Not all the time I didn't. 3512

Q. I mean this time that we are talking about at Seeman Bros.? A. The three of the men?

Q. Yes. A. No, I didn't.

Q. How many of the books did you look at? A. Just the one.

Q. Now, did you have a conversation with the three men?

The Court: Did you have a conversation with the man whose book you looked at?
The Witness: Yes.

Q. Will you tell us what the conversation was?

Mr. Boudin: That is objected to. 3513
The Court: Overruled.
Mr. Boudin: Exception.

A. Well, he just wanted to unload my truck and I told him I thought I had a right to unload my own truck, and he did not seem to want me to.

Q. What did he say? A. "No," he said, "you will have to put a union man on here; it is a union house; you will have to put a City man on here, an 807 man."

And I goes in and sees the receiving clerk. He tells me—

Q. No, no. Did he say anything to you in the presence of any of these men? A. This union man?

The Court: No, the receiving clerk.

The Witness: No, he did not.

Q. You had a talk with the receiving clerk? A. Yes, that is right.

Q. When you came out what did you do? A. I just told the fellow, I said, "I still can't hire you because I don't have any money to pay you." He said, "Well, you have freight bills, haven't you? Well, collect on it, and then
3515 you can pay us."

Q. Have you told us all of the conversation at that time? A. That is what I did. I went and collected my freight and paid the man and he unloaded the truck.

Q. How much did you pay him? A. $9.42.

Q. How long did it take to unload? A. Not over two hours.

Q. Have you ever met any man at Francis H. Leggett while unloading? A. Yes, I met him there.

Q. Will you stand up in this courtroom, Mr. Betts, and tell us if there are any men here whom you have seen at Francis H. Leggett's? A. (Standing) I am not sure of any of the men here.

Q. Beg pardon? A. I am not sure of any of the men
3516 that I saw at Francis Leggett's.

The Court: Well, do you see any men here that you recognize?

The Witness: I see one fellow over there that I saw around there with a group of men. That is about the only one that I can recognize.

Q. Where is he? A. Second one from the end over there, the second row (indicating).

The Court: Which end?

The Witness: Over here (indicating).

Mr. Marks: May the clerk call the name of Harry Zollinger?

The Court: Yes.

The Clerk: Harry Zollinger.

(A man stood.)

Q. Is that the man that is now standing? A. I saw him around there, Francis Leggett's.

Q. All right. Do you remember when you saw him at Francis Leggett's? A. That was in the summer of 1937 when I was running to New York steady.

3518

Q. Did you see him any place else? A. I can't say that I ever did.

Q. Did you see him more than once? A. Maybe I saw him a couple of times.

Q. Did you ever see him with any other people? A. He was always with someone.

Q. Always with the same person or different persons? A. Different persons.

Q. Well, when you say "always", how often have you seen him altogether? A. Not over twice around there.

Q. Did you have a conversation with him? A. Never did.

Q. Did you ever have a conversation with any of the persons with whom you have seen him? A. Yes.

Q. Was it at Francis Leggett's? A. At Francis Leggett's.

3519

Q. Now, can you tell us when you had such a conversation, the approximate time? A. One time it was in July, along about in the middle of July.

Q. 1937? A. 1937.

Q. And what was said by all the persons there?

Mr. Boudin: Objected to.

The Court: Well, I think you had better lay some further foundation and show the circumstances under which he was there.

Q. Did you have a truck there? A. I did, yes.

Q. Do you remember what you had on the truck? A. Canned goods.

Q. Had you already begun to unload when you first saw those men? A. Not at that time I had not, no.

Q. The load was still on the truck? A. Still on the truck.

By the Court.

Q. What time of the day was it? It was in the morning.

Q. How early? A. About 8 o'clock.

3521 *By Mr. Marks.*

Q. Do you remember whether the entire load was consigned to Francis H. Leggett? A. Yes, it was.

Q. Did any of the men show you anything?

Mr. Boudin: Objected to.

The Court: Overruled.

Mr. Boudin: Exception.

A. They just showed me their union books.

The Court: Well, did Zollinger show you a book?

The Witness: He did not.

3522 Q. Now, did you have a conversation with those men?

The Court: Now, wait a minute.

Somebody showed you a book?

The Witness: That is right.

The Court: Aren't you going to show some circumstance connected with that?

Q. Did you look at the book? A. I did, yes.

Q. What did you see on it?

Mr. Boudin: Objected to.

The Court: Overruled.

Mr. Boudin: Objected to as attempting to put in evidence the contents of a document that is not in evidence.

The Court: Overruled.

Mr. Boudin: Exception.

Q. What did you see in the book? A. I seen it was a union book, had Local 807 inside of the book.

Q. How often have you seen such books or similar books, Mr. Betts? A. Well, only when these union men would show them to me, that was all. 3524

Mr. Boudin: I move to strike out the answer as not responsive.

The Court: Denied.

Mr. Boudin: Exception.

Q. Now, did you have a conversation with any of the men on that occasion at Francis H. Leggett's? A. I did, yes.

Q. What was the conversation?

Mr. Boudin: That is objected to, if your Honor please. 3525

The Court: Overruled.

Mr. Boudin: Exception.

A. Well, they just wanted to unload my truck; told me I had to have a City man on there; and I said I didn't think so; I thought I had the right to unload my own truck; and they told me if I knew what was best I would put one on.

Q. What did you say? A. I told them I didn't think I had to put one on; that I had a right to unload it myself.

Q. And what did they say? A. And they said, "If you know what's best, you will put one on."

Q. Did you put one on? A. Not at that time, I didn't.

Q. You unloaded your own truck? A. I did.

Q. Now, can you tell me how many times between the time you were first stopped and June 1, 1938, you paid any money for unloading in New York City?

Mr. Boudin: Objected to.

The Court: I will sustain the objection.

By the Court.

3527 Q. Did you pay any money to anybody on this occasion that you have just referred to at Leggett's? A. No, I did not.

Q. Now, what was the next occasion that you came to New York with a load of any kind of merchandise? A. I am not positive.

Q. Well, about how long afterwards? A. I can't say just how long afterwards.

Q. Well, what is the first occasion that you came to New York when you paid any money to anybody? A. When was the first time?

Q. After this. A. After this?

Q. Yes. A. At Austin, Nichols, I would say.

Q. How long was it after the delivery that you made at
3528 Francis H. Leggett's? A. How long afterwards?

Q. Yes. A. About two weeks.

The Court: Now we have got a time, about two weeks later, at Austin, Nichols.

By Mr. Marks.

Q. Do you remember who was there on that occasion? A. I do not.

Q. How many men did you see? A. Well, about two of them.

Q. Did they show you anything?

Mr. Boudin: Objected to.
The Court: Overruled.
Mr. Boudin: Exception.

A. Yes; they just showed me the book the same as the rest of them.

Q. What did you see on the book?

Mr. Boudin: Objected to.
The Court: Overruled. 3530
Mr. Boudin: Exception.

A. I seen it was a union book.

Q. What union? A. Local 807.

Q. Did you pay any money to anybody that day? A. Yes; I paid some money.

Q. How much? A. $9.42.

Q. How long did it take to unload? A. Oh, not over two hours. Around two hours, the same time.

Mr. Marks: May I have this marked?
The Court: Yes.

(Marked Government's Exhibit 37 for identification.) 3531

Q. I show you Government's Exhibit 37 for identification and ask you if you have seen that before, Mr. Betts? A. Yes, I have.

Q. Do you remember where you first saw that? At Seeman Bros.

Q. Do you remember when? A. Well, it was in the summer of 1937. I don't remember just the date on it.

Q. Do you remember who gave it to you? A. I do not, no, sir.

Q. Do you know his name? A. No, I don't know his name.

Q. On the occasion when you first received that exhibit were you at Seeman Bros. with a truck? A. That is right, yes, sir.

Q. Do you remember what you had on your truck? A. Canned goods.

Q. Did you see any men there? A. Yes.

Q. How many? A. Two or three of them.

Q. Did any of those men show you anything? A. Showed
3533 me their union book.

Q. What union? A. Local 807.

Q. Do you remember whether the man who gave you that paper showed you anything? A. He showed me his book.

Mr. Marks: I offer it in evidence. I am offering that paper, your Honor, for everything except the top three lines. I should also say I am not offering that exhibit as to the reverse side.

Mr. Boudin: That is objected to.

By the Court.

Q. Do you know anyone named Ralph Reed? A. That is right; that is the man I work for.

3534 Q. Where do you say this paper was handed to you. A. At Seeman Bros., on Hudson Street.

Q. Did you see any part of this paper written? A. I did.

The Court: Well, let us have a little more light on it.

By Mr. Marks.

Q. Did you have any conversation with the man who gave you this paper? A. I did. He is the man who unloaded my truck.

Q. What was your conversation with him?

Mr. Boudin: That I object to.

The Court: Sustained. What I would like to have developed is who the man was who wrote the paper if he saw it done.

Q. Do you know who the man is that wrote the paper? A. I do not, no, sir. 3536

Q. Had you ever seen him before? A. I can't say that I did.

Q. Have you ever seen him since? A. I don't know.

Q. Would you know him if you now saw him? A. I would not say; I am not sure that I would know him anymore.

Q. Beg pardon? A. I am not sure that I would know him if I saw him.

Q. Well, will you stand up and look around the courtroom and tell us if you can find that man here? A. (Standing) No, I could not pick the man out.

Q. You could not pick him out? A. No.

Q. All right, sit down. Did you pay that man anything? A. I did. 3537

Mr. Boudin: Objected to.

The Court: I do not know what you mean by "that man" in your question.

Q. The man that gave you Government's Exhibit 37 for identification; this paper: Did you pay him anything? A. I did.

Mr. Boudin: Objection.

The Court: I will overrule that objection.

Mr. Boudin: Exception.

Q. How much? A. $9.42.

Q. Did you have a conversation with him at the time or at about the time you got this paper? A. Yes. He had unloaded my truck.

Mr. Boudin: One moment. I thought your Honor ruled it out.

The Court: Strike out the answer. It is not responsive.

3539

Q. Did you have a conversation with him? A. I did, yes.

Q. What was the conversation?

Mr. Boudin: Objected to.

The Court: Overruled.

Mr. Boudin: Exception.

Q. Well, after he unloaded my truck I paid him $9.42 and I asked him, "How about giving me a receipt on that so I can take it down to give it to my boss?" And he gets on the cab of my truck with me and writes me out a receipt for $9.42. He said, "Just a minute, I will write a letter so you can take it down and give it to your boss and he can get in touch with this union Local 807 so you won't have any more trouble when you come up to New York. If he don't want to come here and get in touch with us, tell him to be prepared to send $9.42 along with the driver so you won't have any more trouble."

3540

Q. And after that conversation did he write this paper? Did he write on this paper? A. He wrote that piece of paper, that letter, and I took it down and gave it to my boss.

Mr. Marks: I renew the offer.

Mr. Boudin: I press the objection.

The Court: Overruled.

Mr. Boudin: Exception.

(Government's Exhibit 37 for Identification received in evidence.)

Mr. Marks: Ladies and gentlemen, the pencil writing on this——

The Court: Just a moment. There is some part of that that has to be eliminated.

Mr. Marks: I wasn't going to read that, your Honor.

The Court: All right. I am going to have that 3542
portion of the document received in evidence photostated.

Mr. Marks: Yes. I said I was reading the pencil part which is the part that was admitted.

The Court: You better tell the jury you are reading the part that was admitted. There are two pencil parts, and I don't want the record to show any confusion as to what pencil part is read.

Mr. Marks: This reads, "Ralph Reid. Your man William Betts has been stopped a few times by union men of New York. He has spoken to you about this. If you care to sign up with union to avoid further trouble, please come down, and if impossible to come, give driver a written affidavit 3543
with signature for okay from union. If not, your man will be stopped and sent back with his load if he hasn't got the day's pay for union man." That is all.

Cross-examination by Mr. Murray.

Q. Mr. Betts, can you fix the precise day when Peter Waskiewicz first spoke to you? A. No, sir, I cannot.

Q. And where was it that you first met him? A. At the Embassy Warehouse on Greenwich Street.

Q. Did he say to you at that time that the Embassy was a union house? A. Yes, sir.

Q. And that union men were permitted to work there? A. Yes, sir, he did.

Q. And that the union men were being paid for unloading in New York? A. He told me we drivers had to pay him.

Q. Well, did you talk to the platform man of the Embassy? A. I did, yes, sir.

Q. Did the platform man tell you it was the custom of
3545 the house to have only union drivers unload?

Mr. Cahill: I object to it.

The Court: Overruled.

A. He told me he didn't want any trouble with the union.

Q. Did he tell you it was the policy of the Embassy to have union drivers unload? A. He told me it might be best for me to put one on, a union man, to keep from causing trouble.

Q. Were you a member of a union? A. No, sir, I was not.

Q. Had you been a member of a union before 1937? A. No, sir.

Q. What I have just asked you about the conversation
3546 you had with Waskiewicz: Was that substantially what was said? A. Yes.

Mr. Murray: If your Honor please, I now move to strike out the testimony in respect to Waskiewicz on the ground that it is not relevant and does not come within the purview of the allegations in the indictment.

The Court: Denied.

Mr. Murray: Exception.

Q. Now, you say that some time in July or August of 1937 when you were at Seeman Bros. you talked to some men and you didn't know them? A. That is right. I did not. I didn't know them.

Q. You can't identify them? A. No.

Q. Did you ever see them afterwards? A. I can't say that I ever did.

Q. Did they ever unload for you afterwards? Those men that you cannot identify? A. I am not sure.

Q. Did you ever give any of those men any money? A. Yes.

Q. I mean after you had seen them at Seeman Bros. in July or August of 1937? A. Did I ever give the same men 3548
any money?

Q. Yes. A. I can't say for sure.

Q. Now, Mr. Betts, you have testified that you saw the defendant Zollinger at some time in the neighborhood of Leggett's? Is that correct? A. Yes, that is right.

Q. Well, now, are you sure that that was before June of 1938 or are you uncertain about it? A. Am I sure it was before June of 1938?

Q. Yes. A. I don't have any date on it, but—just when it was.

Q. Now, wasn't the first time you ever saw Zollinger some time in the year 1939? A. I hadn't been running up here in 1939.

Q. Well, when did you last run up here? A. The last 3549
part of 1938.

Q. Would that be around December of 1938? A. It would be around that, yes, sir; November.

Q. Do you happen to know that up to December, 1938, Zollinger was driving a truck for a hide and leather manufacturing company? A. No.

Q. Could you have been mistaken when you said that you saw Zollinger before June 1, 1938?

Mr. Cahill: I object to the form as speculative.

A. I am sure I saw him around at Leggett's.

Q. But you don't know when? A. I don't know when.

Q. It might have been after June 1, 1938, isn't that right? A. It could have been, yes.

Q. Did he ever talk to you about money? Zollinger I mean? A. I can't say that he did, no.

Q. Did he ever unload for you? A. He never did.

Q. You said that man that you can't identify that you paid $9.42 at Austin, Nichols showed you a book, is that right? A. Yes.

3551 Q. You opened the inside of the book and read its contents, is that right? A. That is right.

Q. You saw Local 807 on the book? A. Not on the book, but I saw it on the inside.

Q. On the inside where you read? A. Yes.

Q. And did you also see that the dues were paid up? A. Yes.

Q. Now, you saw the name of the man that handed you the book on the book, too, didn't you? A. Yes.

Q. What was his name? A. I don't remember his name.

Q. But you remember that 807 was on the book? A. Yes.

Q. And you could tell that the dues were paid up? A. Well, I could tell it was paid in there, yes.

Q. Did you read the name of the man who handed you
3552 the book? A. I can't say that I did.

Q. Did you look at the name? A. No, I can't say that I looked at the name.

Q. The name that appeared on the book was the name of the man to whom you paid the money, wasn't it? A. Yes.

Q. Weren't you interested in knowing the name of the man to whom you paid the money? A. No, I wasn't interested in that.

Q. Well, his name was plainly before you in the book, wasn't it? A. It should have been if I looked at it, but—

Q. It was just as conspicuous as the numerals 807, wasn't it? A. I guess it was.

Q. And the notation that the man's dues had been paid, wasn't it? A. I guess the dues had been paid.

Q. Well, did you talk to the platform man at Austin, Nichols in respect to union men unloading your truck? A. Did I ask——

Q. Did you talk to him? A. Yes, I talked to him.

Q. Did he tell you that it was the policy of Austin, Nichols only to employ union men in unloading at their concern?

3554

Mr. Marks: I object to that, your Honor, assuming a state of facts not in evidence. Austin, Nichols didn't employ the men.

The Court: Overruled.

Q. Do you understand the question? A. I do not.

Q. Or do you want it repeated?

The Court: The stenographer will repeat the question.

Q. (Read.) A. No, he did not.

Q. Well, did anyone connected with Seeman Bros. tell you that? In other words, that it was the policy of their concern to have goods only unloaded by union men? A. No. They told me they didn't want to cause any trouble with the union; they didn't want their men pulled out on a strike, or something like that. 3555

Q. Did they tell you they would prefer that you didn't deliver there unless you did employ union help? A. No, they never told me that.

Q. Now, did Peter Waskiewicz ever ask you for any money? A. Only when he wanted to unload my truck. That was all.

Q. Did he tell you at that time how much it would cost to unload your truck? A. $9.42.

Q. But you didn't give him anything? A. I did not, no, sir.

Q. Now, outside of seeing Waskiewicz on the occasion that you have named and seeing Zollinger some time, there is no one else here that you are able to identify, is there? A. There isn't.

Mr. Murray: Your Honor, I move to strike out the testimony relating to Zollinger.

The Court: Denied.

Mr. Murray: On the ground that the date on
3557 which the witness says he saw him is uncertain in his mind, and that it is not definite and precise that it was before June 1, 1938.

The Court: Motion denied without prejudice to renewal.

Mr. Murray: Exception. No further questions.

Redirect examination by Mr. Marks.

Q. Mr. Betts, did you testify before the Grand Jury that returned the indictment in this case?

Mr. Boudin: That is objected to as not proper redirect.

The Court: Sustained.

3558 Q. Were you subpoenaed to testify before the Grand Jury?

Mr. Boudin: That is objected to.

The Court: Sustained.

Mr. Marks: My only purpose in this, your Honor, is to fix the time that he saw the defendant Zollinger with respect to that appearance before the Grand Jury.

The Court: I will allow it under those circumstances and for that purpose only.

Q. Did you appear before the Grand Jury in this case? A. Yes.

Q. Do you remember when that was? A. No, I do not.

Q. Would it refresh your recollection if I said it was on April 4th——

The Court: No, no. You are not going to testify, Mr. Marks. Not from the position where you are now. If you have anything to show him in the way of a subpoena or anything of that kind, that is one matter, but you can't ask him to take your statement that it was a certain day. 3560

Q. Do you remember what year——

The Court: How does that refresh his recollection? The Court will take judicial notice of the fact that the indictment was filed on May 31, 1938. Now is it claimed by the District Attorney that the witness appeared before the Grand Jury after that date?

Mr. Marks: No, your Honor.

The Court: All right. Then you can ask him whether he saw Zollinger before he testified or not.

Q. Did you see the defendant Zollinger for the first time before you testified before the Grand Jury or after? A. Before. 3561

Mr. Marks: That is all.

Mr. Boudin: If your Honor please, I renew now the motion previously made by Mr. Murray with respect to striking out the testimony as to Zollinger on the ground that what has since been brought out doesn't change the situation.

The Court: Denied.

Mr. Boudin: Exception.

Mr. Murray: I have no recross.

The Court: I will say now that of course I will not consider that the motion which has just been made to strike out the testimony as to Zollinger is a renewal of the motion that was denied without prejudice.

Mr. Boudin: Well, your Honor overrules it now still without prejudice?

The Court: Yes, that is right.

Mr. Boudin: Yes, I understand.

The Court: Anything further?

3563 (No response.)

The Court: Then we will recess until Monday, but before we do it will be necessary for me to suspend Monday about five minutes to three in order to sit in a three-judge court case. I do not apprehend that that case will take very long, and I think it will be more for the purpose of finding out what the extent of the proceeding is than to have testimony of any length taken. So instead of recessing at 3.15 Monday we can recess at five minutes to three and perhaps I could be back here at 3.15. I am mentioning that now so that anyone who has been accustomed to using the time after 3.15 will use it before on Monday. All right. The jury may

3564 retire.

(Adjourned to April 29, 1940, at 10.30 A. M.)

New York, April 29, 1940,
10.30 A. M.

TRIAL RESUMED.

(The clerk called the roll of defendants.)

The Clerk: The defendant Waskiewicz is absent, your Honor.

10.45 A. M.

The Court: It is now 10.45. I am going to let the jury go back to the jury room. You can return to your jury room where you will be at ease. 3566

(The jury left the court room.)

The Court: Will counsel step up, please.

(Conference at the bench between Court and counsel.)

The Court: Let it appear upon the record that at the conference at the bench between Court and counsel I pointed out to them that this constant tardiness of one defendant or another, in my opinion, may possibly work to the disadvantage of the defendants, because there is some testimony in this case that they exacted extra compensation for the delay in the payment of wages, and the jury might feel that because time was of the essence to them, under those circumstances, that they ought to regard time as of the essence on the trial where their liberties as well as their personal rights are at stake; and that I told counsel that since they had not apparently been effective in impressing upon their respective clients the necessity of being present on time, in several cases with no reasonable excuse, that I would have to take means to insure their presence. 3567

Mr. Murray: Your Honor, may one of the defendants step out?

The Court: Yes.

(Defendant Bender was permitted to step out to telephone.)

(Short recess.)

(The following took place in chambers at 12:30 P. M.:)

Mr. Cahill: Judge, the extent of our information as to the whereabouts of the missing defendant is that he was last seen at his usual place of abode on Saturday morning. We have no more recent information, that anybody has seen him since that time.

The Court: Has any inquiry been made at his home?

Mr. Marks: Yes. He lives with his mother-in-law. That is where the check was made. She last saw him
3569 Saturday morning.

Mr. Maguire: She says, as I understand it, that at times he has stopped with a brother up around 41st or 42nd Street.

The Court: Does she know where the brother lives?

Mr. Maguire: She couldn't give the exact address. We asked some of the men and they don't know the location of his brother's home.

Mr. Cahill: It is a gas station up there.

Mr. Marks: Yes. The information was vague but it was something to the effect that the brother might know where he is.

Mr. Boudin: I think if an adjournment were taken the other defendants might find him by tomorrow morn-
3570 ing.

Mr. Cahill: If it is in order, Judge, I would like to apply for a bench warrant.

The Court: The fact that the man is two hours late and has not been home since Saturday would indicate that either something has happened to him——

Mr. Marks: Incidentally, Judge, excuse me, he has not been arrested by the city police over the week-end. We checked that too.

The Court: Did you find out whether he was in any hospital?

Mr. Marks: No, we haven't gone that far yet.

The Court: Well, I think under the circumstances we better forfeit his bail and issue a bench warrant. Of course, we can't go on until we make some disposition of the case so far as he is concerned. Is there any one of these defendants whom he has been intimate with who might know where the brother is?

Mr. Murray: Bender thinks he can find the brother's place, your Honor. That is, he knows someone who is intimately acquainted with him, but he couldn't locate him. The fellow seems to be a steady fellow and doesn't 3572
drink, they say.

The Court: Well, I will take a recess in the case until 2.30 to find out what happened so we will know what we are going to do tomorrow.

Mr. Cahill: May I make this suggestion. Your Honor has an engagement this afternoon. We will therefore have that opportunity to search for him which we ordinarily wouldn't have, but if we avail ourselves of that time we will be in a better position at 10.30 in the morning to advise the Court as to what progress we have made.

The Court: Well, of course the only thing is if he were located between now and 2.30 we would know that we could reasonably expect to go on tomorrow morning. As far as I am concerned I would be willing to open court 3573
earlier to make up for the time we have lost here if you gentlemen want to do that.

Mr. Boudin: Make it 10 instead of 10.30, your Honor.

The Court: I suggest that because either you or Mr. Marks said you had witnesses from out of town here.

Mr. Marks: I was going to say that might work an increased hardship on them because some of them live in South Jersey and have to go home at night.

The Court: Oh, I thought they were people you were holding here in town. I didn't want to have a day go by and nothing done.

Mr. Cahill: I would rather not make a decision to sever today, Judge, to see if we can pick him up this afternoon.

The Court: Well, we can recess until half-past ten tomorrow morning. I am going to be in a statutory court at 3 o'clock. If there were anything to be done this afternoon, depending on how long that takes—I might be through up there in a half hour—I could come back at half-past three and sit until half-past four if this fellow
3575 shows up.

Mr. Maguire: The only trouble is this: If we send these men out in an effort to locate him, in two hours I doubt if they will accomplish very much. I wouldn't like to hold up the convening of court at 2.30 because someone isn't here.

The Court: Well, I am willing to put it over until 10.30 o'clock in the morning.

Mr. Cahill: I think that is all right.

The Court: That is all right with me. All right, we will bring the jury in.

(The following took place in the court room:)

The Court: I would like to ask if the members of the
3576 jury would be willing to come here tomorrow morning at 10 instead of 10.30 in order to make up for the lost time today. Is there anyone to whom that is not agreeable?

(No response.)

The Court: Is that agreeable to counsel for both sides?

Mr. Maguire: It is.

Mr. Cahill: Agreeable to us.

The Court: Under the circumstances we will recess until tomorrow morning at 10 o'clock. I would like the

record to show that there is a statutory court to convene this afternoon at 3 o'clock in the case of Peoria & Eastern Railroad Company, of which court I am a member, that I shall probably be occupied there for the balance of the day after 3 o'clock, and that because of the continued absence of the defendant Waskiewicz, and to afford an opportunity to locate him and to make an investigation and ascertain the reason for his absence, this adjournment is taken, and also because of the fact that there are witnesses in attendance from out of town, and in order to shorten the period which they will be required to remain in the city, I have asked the jury to come here at 10 o'clock tomorrow instead of 10.30. We will now adjourn so far as this case is con- 3578
cerned until 10 o'clock tomorrow morning. I want to warn all of the defendants who are here that they will be expected to be here at 10 o'clock tomorrow. They will be expected to report in to the clerk at five minutes to ten so he can check their presence, and we will be prepared to start at 10 o'clock.

(Adjourned to April 30, 1940, at 10 A. M.)

New York, April 30, 1940,
10.38 A. M.

Trial resumed.

(The roll of the defendants was called and the defend- 3579
ants Carl Macomber and Peter Waskiewicz were absent.)

The Court: Members of the jury, justice fails when its administration is not conducted giving consideration to allowances that should in reason be made for humane conditions. The Court appreciates the sacrifice that you made to come here this morning at 10 o'clock. It was, however, to resume this case then, and it is impossible now. Two of the defendants are ill. It is uncertain at the

present time, according to inquiries which I have had made, just when either or both of these defendants will be able to resume so far as they are concerned in the trial of this case. It seems proper to me to afford a reasonable opportunity to ascertain whether there is sufficient change or restoration of health to go on. In order that that may be done properly and to avoid keeping you here unnecessarily, and after consultation with counsel on both sides, I have determined to recess until 2 o'clock this afternoon, and in any event I feel that we will be in a position then to continue with the trial of the case. So you are relieved until 2 o'clock this afternoon. You may go your several
3581 ways and attend to whatever business you have, and I hope that that will to some extent at least compensate you for the deprivation of your services to your offices or to your homes or whatnot, and I will try during this case whenever the opportunity presents itself, if it can be done without prejudice to the case, to give consideration to other outside needs of the jurors which they must necessarily neglect in the performance of their extended period of duty here.

(The jury retired.)

The Court: Now, Mr. Cahill, I would like to make this suggestion on the record: I understand that each of these defendants is in a hospital.

Mr. Cahill: That is true, your Honor.

The Court: And I am told that one of the defendants
3582 at least will probably be able to report here before one o'clock.

Mr. Cahill: I am so informed.

The Court: There is some doubt about the other; but in either event I think you ought now to select and present to the Court the name of some qualified physician who, when both or either of these defendants come here, can examine them for the purpose of ascertaining their fitness physically to go on with the trial, for certainly there is

no disposition on my part to force anyone to trial when he is not physically able to sit here and take part in this trial in a way that enables him with the aid of his counsel to protect his own interests.

Mr. Cahill: I will immediately set about trying to locate a doctor that the F.B.I. customarily uses to see if we can have him here by one o'clock to report to your Honor at two.

The Court: All right. We will recess until two o'clock.

(Recess to 2 P. M.)

AFTERNOON SESSION. 3584

(The following proceedings were had at 3.10 in chambers):

Mr. Cahill: If your Honor please, during the recess the defendant Waskiewicz——

The Court: Wait a minute, Mr. Cahill. Let us have the record show that the defendant Waskiewicz failed to appear this morning as did also the defendant Macomber, and it was found that the former was at Bellevue Hospital and the latter at the Beekman Street Hospital, and both of them appeared here this afternoon; but before resuming the trial I requested that the defendants be examined by a physician for the purpose of ascertaining if they were physically able to go on with the trial and participate 3585
therein without any prejudice to themselves; and Mr. Cahill secured the services of M. L. Gottleib, a registered and practicing physician who, after an examination of both defendants here in the building, reports now in the presence of respective counsel that in his opinion there is no reason why either of these defendants may not safely resume the trial, and that moreover in his opinion they are both capable of participating and understanding what the nature of the proceedings are.

Now if there is anything you want to add to that, you may do so.

Mr. Cahill: Nothing I want to add.

Mr. Murray: May I ask a question of the doctor, if your Honor please?

The Court: Surely. If either of you gentlemen have not seen your respective clients and want an opportunity to talk to them, why, you may do so.

Mr. Murray: Well, I have not seen Waskiewicz. I have seen Macomber.

Doctor, do you find Waskiewicz in a stable mental condition?

3587 Dr. Gottlieb: He is. He is well oriented, and he responds to questioning; and furthermore the history, as elicited, shows that he has imbibed very little gas. I mean, the type of episode of this suicidal attempt shows that most of the gas escaped from the room, and then he recovered very quickly. At three o'clock in the afternoon, when he describes the episode, at 7.30—the police came in—and he awakened in Bellevue. He was perfectly conscious. In other words, there was only a period of unconsciousness of about five hours.

The Court: Do you feel there is any effect?

Dr. Gottlieb: None whatsoever. I base that impression, that medical opinion, on the fact that there was only a five-hour episode, five-hour period. He understands questions, and he impresses me as having no neurological or

3588 mental disturbances at all.

Mr. Murray: He has not?

Dr. Gottlieb: None whatsoever. And furthermore I questioned him what was done for him in Bellevue. He wasn't even treated. He is regarded as being a very mild case. I am only telling you as to why I have the opinion.

Mr. Murray: My inquiry, doctor, was directed for the purpose of trying to learn what was in his mind and what impelled him to the attempt, and whether or not

there is a prognosis that he would be likely to try the same thing again.

Dr. Gottlieb: Well, I asked him that. It seems he was drinking from Saturday on, and it seems this state of alcoholism lowered his resistance, and he made the attempt. But he was also questioned as to whether he had any mental diseases in the past, and he has never had any mental disease in the past. Just one of those things: A man proceeds to drink a few quarts of whiskey, and his resistance is lowered, and he makes the attempt. But I feel he didn't even make a very good attempt, because I questioned him about sealing windows and doors, and he made no such attempt, even to close a ventilator, and I 3590
asked him. It was not a true suicidal attempt of a normal person, a person who really wants to commit suicide. I would say that right at the moment he shows no abnormality.

The Court: Mr. Murray, do you want to confer with him?

Mr. Murray: Yes, I would like to, Judge.

The Court: All right, you may do so.

(Mr. Murray left chambers to confer with his client Waskiewicz.)

Mr. Duff: Judge, I was speaking to this defendant Macomber and he tells me he feels he will be able to sit through the trial without trouble but when he feels these spells coming on he has to get to the bathroom immediately, and he says if he waits even so much as a minute

The Court: All he has to do is to indicate to the marshal 3591
who is right there at the end of where he sits, right by the door, and the marshal indicates to me that he has gone in there, and we can suspend for the moment or two that it takes him to go in there. He doesn't have to travel 20 feet.

(Mr. Murray returned to the chambers.)

Mr. Murray: Well, I guess we can go on, Judge. He lost his wife in childbirth. He has nothing to live for, he says.

The Court: All right.

(The following proceedings took place in the court room);

(The clerk called the roll of the defendants.)

CARLTON C. HOOKS, residing in High Point, North Carolina, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Ennis.

Q. What is your business, Mr. Hooks? A. Trucking.

3593 Q. Between what points? A. North and South Carolina and New York City.

Q. What is the name of your company? A. Hooks Motor Line.

Q. What is your position in that company? A. President, general manager and senior partner.

Q. Have you been engaged in that business since the end of 1936? A. Yes, sir.

Q. Before December, 1936, about that time, what kind of merchandise did you truck into New York City? A. We handled mostly furniture, but general commodities along with it.

Q. Who unloaded your merchandise in New York City? A. The men who brought the trucks from the south.

3594 Q. How many men did you send on a truck? A. Two men.

Q. Did you have a terminal in New York in December, 1936? A. Yes, sir.

Q. Where was it? A. 516 West 25th Street.

Q. Did you have a representative of yours at that terminal? A. Yes.

Q. Did you visit New York City with respect to your trucking operations in December of 1936? A. I did.

Q. Did you have any conversations at your place of business on 25th Street with respect to the unloading of your trucks? A. Yes.

Mr. Maguire: Objected to.

The Court: Overruled.

Mr. Maguire: Exception.

The Court: That was 25th or 26th Street?

The Witness: 25th Street.

Q. With whom did you have such a conversation at that time? A. We had conversations with numerous Local 807 drivers.

Mr. Murray: I move to strike it out as a conclu- 3596
sion.

The Court: Strike it out.

Q. Do you know the name of any person with whom you had such conversations? A. One of them with Mr. Campbell.

Q. Do you know his full name? A. William Joseph Campbell.

Q. What was the time of this conversation? A. It was around the middle of December.

Q. Of what year? A. 1936.

Q. Where was the place? A. 516 West 25th Street.

Q. At your terminal? A. Yes, sir.

Q. Were there other persons with William Campbell at that time? A. Yes, there were five or six other people with 3597
him.

Q. Will you stand and look around this court room and tell the Court and jury if you see that man whom you call William Campbell? A. (Standing) Yes, sir.

Q. Will you indicate where he is? A. He is back of this fellow with the jacket (indicating).

Q. In what row?

(A man stood up.)

Q. The gentleman standing? A. Yes.

Mr. Ennis: May the clerk call the name of William Campbell?

The Court: Yes.

The Clerk: William Campbell.

(A man stood up.)

The Court: Is the man who has now arisen the person whom you identified?

The Witness: Yes, sir.

The Court: As having been the person you saw in December, 1936?

3599 The Witness: Yes, sir.

Q. Will you look around the room again and tell the Court and jury if you see anyone else who was present at that meeting? A. This fellow with the red necktie with the button on his coat.

The Court: In the front row?

The Witness: Yes.

The Court: How far from your right?

The Witness: He is the third man.

The Court: All right; call the name of John Weinheimer.

Mr. Ennis: May the clerk call the name of John Weinheimer?

3600 The Clerk: John Weinheimer.

(A man stood up.)

The Court: Is the man who has arisen the person whom you identified?

The Witness: I think that he was there. I am not absolutely positive; I have seen him before.

Q. Is there anyone else? A. I think the fellow on the end of the second row.

The Court: Which end?

The Witness: This far end (indicating).

(A man stood up.)

The Witness: Yes.

Mr. Ennis: May the clerk call the name of Austin Furey?

The Clerk: Austin Furey.

(A man stood up.)

The Court: Is the man who has arisen in response to that call the person you referred to?

The Witness: Yes, sir.

The Court: Anything further?

3602

Q. Will you look around and see if there is anyone else who was at that conversation? A. I am not positive of any others that were there.

Q. You are not positive of anyone else? A. No.

Q. Will you state, Mr. Hooks, what was said at that conversation? A. Well, we talked——

The Court: Now, Mr. Hooks, don't give us your impression or your conclusion.

The Witness: Yes, sir.

The Court: But tell us either in words or in substance what was said by any one of those men in the presence of yourself and what you in turn said to them.

3603

The Witness: Yes. We talked in front of our warehouse there for some little time, and the subject of that conversation was a union contract and the use of Local 807 men on our equipment when it arrived in New York. So after talking in front of the warehouse for awhile we went upstairs to the Spector Motor Service office, and while up there we discussed this contract further. I explained to them

that we were not having enough trucks come into New York or enough work that we could use 807 men; that our men had been delivering their own loads since 1933; that we saw no reason for putting additional men to work. So they seemed to think—

The Court: No, no, not what they seemed to think.

The Witness: They expressed the thought——

The Court: Just say what they said.

The Witness: They said possibly at that time we didn't have enough work to keep men steady all the time and if we would use a man occasionally on the
3605 truck to show that we were willing to work with them that we wouldn't have to sign a contract at that time and that they would work along with us on that basis. So I told them that occasionally we would use those men, but with the revenue we derived from the trip and with the merchandise we were handling, that we could not afford to pay the $9.42 which they asked in addition to the labor that we already had on the trucks. So they agreed to—

The Court: No. What did they say?

The Witness: They said they would not bother us provided we did use a man two or three times a week on those trucks.

Q. Did all of these men speak to you or did one of them
3606 carry on the conversation? A. Mr. Campbell did most of the talking.

Q. Did you thereafter use 807 men? A. We did occasionally.

Q. How many trucks a week did you have coming into New York at that time? A. Usually from four to six.

Q. Did you continue to have men on the trucks? A. I did.

Q. When you used an 807 man, was that a third man on the truck? A. A third man.

Q. You spent some time in New York on your business? A. Yes.

Q. Could you state from your knowledge of the business how long it took to unload your trucks in New York City?

Mr. Maguire: That is objected to.

The Court: Sustained.

Mr. Maguire: Sustained?

The Court: Yes.

Q. Do you know the names of any of the 807 men who thereafter worked for you? A. Yes. I remember some of them. 3608

Q. Will you state them, please? A. One by the name of Andy; one by the name of Bill; one by the name of Steve. There is other ones that I don't remember the names, but possibly could recognize them.

Q. Will you stand and look around this court room and see if you see any of those persons who worked for you? A. (Standing) The fellow on the far end with the red and gray jacket in the front.

Q. In the first row? A. In the first row.

Mr. Ennis: May the clerk call the name of George Bagley?

The Court: Yes. 3609

The Clerk: George Bagley.

(A man stood up.)

The Court: Is the man who has arisen the person you identify?

The Witness: Yes, sir. The fellow with the gray jacket with blue sleeves in the front row.

The Court: Where is he sitting?

(A man stood up.)

The Court: The man who has just arisen voluntarily, is he the person?

The Witness: Yes.

Mr. Ennis: May the clerk call the name of Abraham Klenofsky?

The Court: Yes.

The Clerk: Abraham Klenofsky.

(A man stood up.)

The Court: Is that the man who has just arisen?

The Witness: Yes. The fellow in the back row, third from the far end.

3611 (A man stood up.)

The Court: The man who has just arisen?

The Witness: Yes.

Q Do you know his name? A. I think that is Eddie Weinheimer?

Mr. Ennis: May the clerk call the name of Edward Weinheimer?

The Court: No, that is not necessary.

The Witness: The fellow sitting just in front of him here (indicating).

Q. Sitting in front of the last person you identified? A. Yes.

3612 Q What colored suit has he got on? A. He has on a blue jacket.

Mr. Ennis: May the clerk call the name of Andy Jakakas?

The Court: Yes.

The Clerk: Andy Jakakas.

(A man stood up.)

The Witness: That is all that I can positively identify.

Q How long did you maintain this terminal at 25th Street? A. We stayed there from about the 1st of December until February or March.

The Court: Of what year?

The Witness: The 1st of December of 1936 until about March of 1937.

Q. Do you recall any further conversation in New York City during that period with any of these men? A. Yes. I came back to New York the latter part of January or 3614
the first of February.

Q. Whom did you see? A. I saw my New York terminal manager and a quite a few of the Local 807 drivers.

Q. Who was your New York terminal manager? A. Mr. Ken Marr.

Q. Is he still employed by you? A. No.

Q. When did he leave your employ? A. He left my employ when I came back in February of 1937.

Q. Do you know where he is? A. No, sir.

Q. Have you ever seen him since he left your employ? A. No, sir.

Q. Did you have a conversation at that time about unloading your trucks in New York City? A. Yes, I talked to Mr. Marr—— 3615

Mr. Maguire: I object to anything further than a "Yes."

The Court: Yes.

Q. Did you have any?

The Court: With whom?

The Witness: Mr. Marr, New York terminal manager.

Q. In addition to the conversation with Mr. Marr, did you have any conversation with any of the persons you have identified? A. Yes. I called Mr. Campbell in regard to——

The Court: When you say you called him, do you mean——

The Witness: On the telephone; and——

Mr. Maguire: I object to the conversation, sir.

The Court: Overruled.

Mr. Maguire: Exception. No foundation laid.

Q. Proceed. A. And I talked to him with regard to the
3617 fact that we had agreed that we were to use a man occasionally; and it seemed that every truck that came into New York was being stopped and we were forced to put a man on the truck to unload it; and they were following the trucks if we did not, to the consignees, telling them they would call a strike in their plant if they did accept the merchandise.

The Court: Is this what you told Mr. Campbell?

The Witness: Yes. And the customers were complaining to us continually.

Q. What did Campbell say? A. Well, he said, "We have played along with you as long as we can. You will have to sign a contract to use all 807 men or not operate in
3618 New York."

Q. What did you say to that? A. I told him if that was his answer that we would have to close our New York office; that we could not stand the losses that the additional labor was costing us.

Q. Was anything else said in the conversation? A. I think that was the majority of the conversation.

Q. That is all you remember now? A. Yes.

Q. Do you recall, was there any further conversation with any of these persons while you were at that terminal? A. There was a remark made that if we did not use——

Mr. Maguire: I object to that.

Q. No, no——

The Court: Yes, strike out the answer.

Q. Just yes or no. Was there a conversation? A. Yes.
Q. A further conversation? A. Yes.
Q. When was that? A. That was the latter part of February. 3620
Q Where was it? A. At our terminal.
Q. With whom was it? A. Local 807 drivers.

Mr. Maguire: I move to strike it out, if your Honor please.

The Court: Yes, strike it out.

By the Court.

Q. Do you know who any of these drivers were? A. I don't remember their names; no, sir.
Q Were they any of the persons whom you have already identified here today? A. I would not say positively that they were. 3621

By Mr. Ennis.

Q. Where did you see them? A. In front of our terminal at West 25th.
Q. Did they show you anything? A. No, they had their union buttons on their caps——

Mr. Maguire: I move that that be stricken out as not responsive.

The Court: Well, strike it out. It only necessitates another question.

Q. What did you see on them?

Mr. Maguire: Objected to.
The Court: Overruled.
Mr. Maguire: Exception.

A. I saw their buttons on their caps with "Local 807" on the button.

3623 Q. What was the conversation?

Mr. Maguire: Objection, sir.
The Court: Overruled.
Mr. Maguire: Exception.

A. They made the remark that they would see to it that we would not do business in New York unless we did use 807 men——

Q. What did you say? A. (Continuing) That they would break up the equipment, if necessary.

Q. They said that? A. Yes.

Q. When did you leave that terminal? A. I left there on the 1st of March, 1937.

3624 Q. How long was that after this conversation you have just recounted? A. Less than a week.

Q. Did you go to another terminal in New York City immediately? A. No. We were without a terminal for approximately three months.

Q. Did you then establish another terminal in New York City? A. We did not establish a terminal; we established a call station where the customers could call for information.

Q. Where your customers could call for information? A. Yes.

Q. Where did you establish that call station? A. 324 Hudson Street.

Q. How long did you maintain that call station? A. We maintained this call station until around September of 1937.

Q. Did you spend any time there on your business during that period? A. Yes. I was there possibly for a day or two at a time during that period.

Q. How many times? A. Approximately three or four times.

The Court: Is that September or November? 3626
The Witness: That was in September.

Q. Did you, during any of those visits, have any conversations with any of the persons whom you have identified or any of the other persons to whom you have referred with respect to unloading your merchandise in New York City? A. Yes, sir.

Q. Can you recall the time? A. It was just after we had opened the call station.

Q. And when was that? A. That was in June of 1937.

Q. And where was this conversation held? A. 321 Hudson Street.

Q. Do you know the names of the persons with whom you had it? A. No, sir.

3627

The Court: What was the answer?
(Answer read.)

By the Court.

Q. Any of them? A. No.

Q. Had you ever seen any of them before that time? A. I had seen them before, yes.

Q. Where? A. Around the warehouse at West 25th Street.

By Mr. Ennis.

Q. Had you ever seen any of them in the company of any of the persons whom you have identified? A. Yes.

Q. In the company of which persons? A. I don't know exactly which persons. We had so much trouble, it is hard——

The Court: No, strike out after "persons."

Q. Did they show you anything? A. No, sir.

3629 Q. Did you see anything on their persons? A. I saw their buttons on their caps.

Q. What did you see on the buttons? A. "Local 807."

Q. What was the conversation? A. They said——

Mr. Maguire: Objected to.

The Court: Overruled.

Mr. Maguire: Exception.

A. (Continued) They said that they thought I had quit doing business in New York, had given up the terminal, and that they saw the equipment still on the streets and we were still going to use Local 807 to do business in New York.

3630 Q. What did you say? A. I told him that we had no reason for employing them; that we had plenty of men to do the work and that we still could not afford to use them.

Q. How long did you state that you kept that call station? A. Until September, 1937.

Q. Did you leave there at that time? A. We did.

Q. Did you establish another call station or terminal in New York City? A. We established a terminal at 304 Spring Street.

Q. Immediately upon leaving this call station? A. Yes.

Q. Did you in the conduct of your business spend any time at your terminal? A. I did.

Q. About how much time did you spend there? A. Approximately two to three days every four or five weeks.

Q. How long did you maintain that terminal? A. We stayed there until February of 1938.

Q. During your time there did you have any conversations with respect to unloading your merchandise in New York? A. I did.

Q. Do you know the names of the persons with whom you had conversations, with whom you had those conversations? A. I talked first with Mr. Dickerson, the manager 3632
of the terminal there; told him the trouble we had had—

Mr. Maguire: I move to strike it out.

The Court: Yes, strike that out. Just talked with Dickerson.

Q Who was Dickerson? A. He was the manager and the lessee of the terminal.

Q. And you also used that terminal? A. Yes.

Q. Did Mr. Dickerson also engage in trucking? A. He did.

Q Did you use any of his trucking facilities for your work? A. I did.

Q. In what way? A. Well, when the trucks had more stops than they could get off, or stops that were far dis- 3653
tant from other points where we were making deliveries, we would drop those at his platform and he made those deliveries. On pick ups, when our trucks wasn't available, he made the pick ups for us.

Q. Do you know whether Mr. Dickerson employed 807 men? A. He did.

Q. Did you pay Mr. Dickerson? A. I did.

Q. Did you on any occasions pay the men, his drivers, directly? A. Yes.

Q. What arrangements did you have?

Mr. Maguire: I object to it.
The Court: Sustained.

Q. Apart from these conversations with Mr. Dickerson, did you have any other conversations during that period about your unloading? A. I did.

Q. With whom? A. With members of Local 807.

Q. Do you know the names of any of those members? A. One of them was Steve; I don't remember his last name.

Q. Do you know any other names? A. With Pep; with Bill Simpson; the others, I don't remember their names.

3635 Q. Will you stand and look around this court room and tell the Court and jury if you see this Bill Simpson you mentioned here. A. (Standing) I am not positive, but I think he is on the end, the back row.

Q. Can you see well from there? Would you like to stand down and step closer?

The Court: You may go down on the floor, if you like.

A. I think that is he (indicating).

Q. The last one in the last row? A. Yes.

Mr. Ennis: May the clerk call the name of William Simpson?

3636 The Clerk: William Simpson.
(A man stood up.)

Q. Do you recall any particular conversation with William Simpson at that time? A. No. We were all talking back and forth in regard to it.

Q. Well, do you recall any conversation at which he was present? A. Not directly.

Q. Do you recall any conversation at that place during that period about a load of wine that you had to deliver? A. Yes.

Q. With whom was that conversation? A. With members of Local 807.

Q. Do you know the names of those members? A. No, sir.

Q. Did you ever see them in the presence of any of the persons you have identified today? A. Yes.

Q. In the presence of which persons? A. I don't know just which persons, at which particular time.

Q. Where did that conversation take place? A. At 304 Spring Street. 3638

Q. Was it on the street or inside? A. On the platform.

Q. On the platform? A. Yes.

Q. How many of those persons were present? A. There were four or five of them.

Q. Do you remember about what time that conversation took place? A. In January; the early part of January, 1938.

Q. Was your truck loading or unloading? A. It was backed to the platform ready to load.

Q. What was the merchandise which was about to be loaded? A. Barrels of wine.

Q. Where was it going? A. North Carolina.

Q. Had any of it been loaded when you first saw those persons? A. I think they had two or three barrels of it on.

Q. Who was loading? A. My men. 3639

Q. Did these persons show you anything? A. No.

Q. Did you see anything on their persons? A. I saw their buttons on their caps.

Q. What did you see on the buttons? A. "Local 807."

Q. What was the conversation?

Mr. Maguire: Objected to.

The Court: Overruled.

Mr. Maguire: Exception.

A. We talked in regard to the loading of the wine. It had been picked up by Local 807 men and put on the platform waiting for——

Mr. Maguire: May I ask if that is part of the conversation?

The Court: Was that said in the conversation?

The Witness: Yes.

And I told them I didn't think we should have to pay a Local 807 man to pick the wine up and pay another 807 man to load it on our truck; that it already involved more than a day's pay and I didn't think—I knew we couldn't afford to pay the price of
3641 two men and the pick up of the wine. So they told me if the wine went on that truck a Local 807 man would have to put it on. So after arguing for about 45 minutes about it I agreed to put a Local 807 man on and pay him for a day's work also to load the wine which took about 45 minutes.

Q. Do you recall anything else that was said in that conversation? A. No.

Q. Do you know the name of this man you paid? A. I don't.

Q. Did he load the wine? A. Yes.

Q. Did your man help him? A. Yes.

Q. How long did it take? A. About 45 minutes.

3642 Q. How much did you pay him? A. $9.42.

Q. In what form did you pay that? A. Cash.

Q. Cash? A. Yes.

Q. Before the wine was loaded on the truck did your man continue to load while you conducted this conversation for 45 minutes? A. No. They wouldn't allow them to.

Mr. Maguire: I move that the latter part be stricken out.

The Court: Strike that out.
Yes or no.
The Witness: No.

Q. At that time while the loading was suspended and you were having this conversation was there anything said about your men continuing to load the wine? A. The man with whom I was talking——

The Court: No. Just answer yes or no.
The Witness: Yes.

Q. What was said? A. They said they wouldn't allow them to load and it would be best for them not to continue 3644
trying.

Q. How long did you remain at that terminal? A. I stayed until February or March, 1938.

Q. Did you immediately establish another terminal in New York? A. No.

Q. Did you ever thereafter establish a terminal in New York? A. No.

Q. When you left there did you maintain any New York representation or office? A. No.

Q. After this episode do you recall any other conversation? A. I do.

Q. That you had on this matter of unloading at that place? A. I do.

Q. When was that? A. That was the latter part of Feb- 3645
ruary or the first of March.

Q. With whom did you have that conversation? A. We had two conversations along that time.

Q. Well, were they both on the same day? A. Both on the same day, yes.

Q. At what time was the first one? A. The first one was in the afternoon of the last day we were in the terminal.

Q. With whom did you have that conversation? A. Mr. Dickerson.

Q. Following the conversation with Mr. Dickerson what did you do? A. My truck drivers called in from their last stop and asked for pickups. I told them there was——

Mr. Maguire: I object.

The Court: Wait a minute. Whom did you have this conversation with?

The Witness: My driver.

The Court: Strike it out.

By the Court.

Q. You had a talk with Mr. Dickerson? A. Yes.

3647 Q. Then you had a talk with one or more of your drivers? A. Yes.

Q. After that did you have a talk with anybody else? A. Yes, sir.

Q. Can you designate the person by name with whom you had that conversation? A. Yes, sir.

Q. Is it a person who is here now? A. Yes.

Q. Who is the person? A. Eddie Weinheimer.

The Court: All right.

By Mr. Ennis.

Q. Before you spoke to Eddie Weinheimer what did you do after your talk with Mr. Dickerson? What did you

3648 yourself do? A. I talked with the driver of the truck and told him to come to the warehouse.

Q. No.

The Court: No, no. Don't tell us what conversation you had. Strike that out.

The Witness: I ordered the truck to the warehouse.

Q. And did you see your truck pull up to the warehouse? A. I did.

Q. Was it backed into the platform? A. No, sir.

Q. Well, did you see the truck pull up to the warehouse to load or unload? A. Yes.

Q. Was any load placed on the truck before you saw Eddie Weinheimer? A. No.

Q. Where did you see him? A. On the platform.

Q. Near your truck? A. Yes, sir.

Q. Was anyone with him? A. Yes. There were two other fellows with him.

Q. Do you know the names of either one of them? A. One of them was named George, and I don't remember the other fellow's name. 3650

Q. Will you stand and look around the court room and state whether you see either of those other persons here. A. (Standing) I think it was this fellow in the front row, second from this end (indicating).

(A man stood up.)

Q. Do you think that he was one of the persons? A. I think so.

Mr. Ennis: May the clerk call the name of Morris Reichler.

The Clerk: Morris Reichler.

(A man stood up.) 3651

The Court: Is the man who has arisen the person whom you referred to?

The Witness: No, he was not with them, your Honor.

Q. What did you say? A. He wasn't with them.

Q. He wasn't with them? A. No, but a fellow that looks similar to him, though. It is difficult to identify the per-

sons because of the different dress. The fellow there from the end of the front row, far end (indicating).

Q. In the front row? A. Yes.

Q. You mentioned that there were two persons with Weinheimer? A. Yes.

Q. Do you identify that person by one of the names you mentioned? A. I think he is the one that was called George.

Mr. Ennis: May the clerk call the name of George Needelmann.

The Clerk: George Needelmann.

(A man stood up.)

3653

Q. How were these men dressed at that time? A. As drivers.

Q. Well, can you explain that more fully? As drivers what did they wear? A. It was during the winter. They had heavier clothes, jackets, caps.

Q. What was the conversation you had with Weinheimer and these two men? A. I told the truck to pull to the side door; they were going to load everything they had there and were moving from the terminal.

Q. What did they say to you? A. That I should pull the truck to the side door, and I started to raise the door between the warehouse platform and the truck. When I did Weinheimer pushed me back and said, "You are not going to load anything. We are going to put a man on the truck to load it or it doesn't load."

3654

Q. What did you say? A. I told him that we were moving out of the terminal, we wouldn't be there any more, and all we wanted to do was get what we had there and get out.

Q. When Weinheimer pushed you was the door raised? A. Partly raised, partly up.

Q. After he pushed you did it remain raised? A. No. He lowered it.

Q. Then what happened? A. I attempted to raise it up, and I was pushed back again.

Q. By whom? A. By Weinheimer.

Q. Then what happened? A. About that time one of the fellows that was with Weinheimer left.

Q. Do you remember which one? A. No, I don't.

Q. Did he say anything in your presence before he left? A. No.

Q. Then what happened? A. In about ten minutes he came back with about six or eight others.

Q. What happened then? A. And we talked about the fact that we were moving and it would only take us about 30 minutes to put what we had in the warehouse on the 3656
truck and that I didn't think it was worth $9.42 for the privilege of 30 minutes.

Q. What did they say? A. They said it would be that way or none at all.

Q. Then what happened? A. I saw that we wouldn't gain anything by the argument. So I called the precinct and asked for police help. In about five minutes three police cars pulled up in front of the warehouse.

Q. Will you stand and tell the Court and jury whether you see in the court room any of the men who came back with the one chap who left for ten minutes and came back with others. A. I am afraid I couldn't identify them positively.

Q. When you did look around the court room before did you see any persons whom you could say positively were 3657
those persons? A. No, because I have seen them so many times at different places.

Q. Had you seen these six or seven persons who came back with the one before? A. Most of them, yes.

Q. Had you seen them in the presence or other persons whom you know? A. Yes.

Q. Of what persons? A. I don't know which they were with.

Q. Where had you seen them before? A. Usually around the warehouse platforms.

Q. Did you ever have any conversations with them about unloading your goods in New York? A. Yes, with practically all that were in that bunch that hung together all the time.

Q. What happened after the police came? A. I told them my side of it, that I had been having trouble and I was getting out of New York, giving up the terminal, and that I wasn't allowed to load what belongings we had in the warehouse and leave peacefully; we had put on a $9.42 man, and there was quite an argument. The 807 men
3659 told their view of it; we told ours. The policemen finally said, "Well, if you are moving out, go ahead and load your freight and get out." They told the Local 807 men to scatter and not to bother us any more.

Q. Then what happened? A. They left and we loaded the truck. The police followed the truck to the ferry; so, it was gone and we had no more trouble.

Q. And you never came back to that warehouse again? A. No.

Q. Do you recall any occasion during this period from December, 1936, to, say, April or May, 1938, in which your trucks took more than one day to unload in New York City? A. Yes.

Q. Can you recall any such occasion particularly? A. Yes.

3660 Q. When was that? A. It was in January of 1937. We brought the truck into New York; my two men pulled in front of the terminal.

Mr. Maguire: May I ask if the witness was present?

The Court: Were you present?

The Witness: No, sir.

Mr. Maguire: Objected to.

The Court: Sustained.

Q. Do you recall any occasion when you were in New York on your business at one of your terminals where it took more than one day to unload one of your trucks? A. No, sir.

Q. Did you ever pay men more than one day's pay for unloading your trucks in New York City?

Mr. Maguire: Objected to; vague and indefinite.
The Court: Sustained.

Q. Did you on some occasions pay Local 807 men for working on your trucks? A. Yes.

Q. In what way did you pay them? A. Cash.

Q. Did you on some occasions pay them personally? A. 3662
Yes.

Q. In what other ways did you pay them? A. Through the drivers.

Q. You gave the drivers cash? A. The drivers of my trucks collected the cash on their loads and they would pay the drivers—the Local 807 men and bring receipts to the main office.

Q. Did you ever personally pay any 807 men more than $9.42 for unloading one truck?

Mr. Maguire: Objected to.
The Court: I will allow that. Yes or no.

A. Yes, sir. 3663

Q. Can you remember such occasion? The time and place? A. I don't remember the time or place—the place was at 215—516 West 25th Street.

Q. You do remember how long you had that terminal? A. Yes.

Q. During what period? A. It was during the month of February.

Q. Of what year? A. 1937.

Q. What load was the truck carrying at that time? A. Furniture.

The Court: Did you make these payments yourself?

The Witness: Yes, sir.

Q. Do you know to whom you paid the money? A. No.

Q. How much did you pay?

Mr. Maguire: Objected to.

The Court: Sustained.

This was at what time?

3665 The Witness: February, 1937.

Q. Where did you see the man to whom you paid some amount? A. At our terminal.

Q. Did he show you anything? A. No.

Q. Did you see anything on his person? A. Yes.

Q. What? A. His Local 807 button on his cap.

Q. Did you have a conversation with him? A. Yes.

Q. What was that conversation?

Mr. Maguire: Objected to.

The Court: Overruled.

Mr. Maguire: Exception.

3666 A. The conversation was that it had taken him about 11 hours to put off a load which should have been put off in about four hours.

The Court: Did you say that to him?

The Witness: Yes, sir.

Q. What did he say? A. He said that he couldn't help it, that he was tied up with the traffic and couldn't get around the City.

Q. What did you say? A. I told him that he shouldn't have been tied up to the extent that it had taken twice as long and almost three times as long to put the load off.

Q. Did either of you say anything about how much should be paid? A. Yes.

Q. What was said? A. I told him that I thought $9.42 should be enough without paying three hours overtime, that I had been without the use of the truck in the afternoon when I should have had it.

Q. Then what was said? A. He said the union rules were that they were paid time and a half overtime and that he was going to collect it.

3668

Q. Was it the practice in your business to have your drivers report to you if they couldn't complete deliveries within a day? A. Yes.

Q. Do you remember any occasion during this period from December, 1936, until April or May, 1938, any particular occasion when you did not receive a report from a truck? A. Yes.

Q. Do you know the persons who were operating the truck? A. No.

Q. Did you yourself have any conversation with those persons? A. No.

Q. Did you have a conversation with your drivers about that incident? A. I did.

Q. Mr. Hooks, turning your mind back to the occasion upon which you had a discussion about the loading of some wine: Do you recall anything said in that conversation about your equipment? Your trucks? A. Yes.

3669

Q. Who said it? A. One of the Local 807 men.

Q. Was it one of the men to whom you paid $9.42 to load that wine? A. I am not positive whether it was the man I paid for loading or the one that was with him.

Q. But it was one of the group? A. Yes.

Q. What was said? A. That unless we did start using 807 men on our trucks and not try to deliver around the

City without 807 men, it would be a very easy matter to put sand in the crankcase since they knew where they were parked overnight.

Q. Since they knew where your trucks were parked overnight? A. Yes.

Mr. Ennis: That is all.

The Court: Cross-examine.

Cross-examination by Mr. Murray.

Q. Who said that? A. I am not positive who said that. It was a Local 807 man.

3671 Q. When was it said? A. It was said in January, 1938.

Q. What date in January? A. I don't know.

Q. Where in the City of New York was that said to you? A. 304 Spring Street.

Q. In the day or the night time? A. The day—at dusk.

Q. Had you ever seen the man before who said that? A. Yes.

Q. Where had you seen him? A. Around the terminal there.

Q. Do you see him here in the court room? A. Possibly. but I don't recognize the face with the particualr incident.

Q. Are you able to point out in this court room any man that said that to you, concerning putting sand in your crankcase? A. No.

3672 Q. Will you describe to this jury what a Local 807 button looked like in 1936? A. It was a round button with the word "Local" over the top of "807" figures, to the best of my memory.

Q. It said "Local" over the top, did it? A. I think so. I wouldn't say positive because I have seen so many union buttons since that time.

Q. I ask you now whether you can precisely describe what you call a Local 807 button that you say you saw in

December of 1936. A. I wouldn't attempt to describe it accurately because of the fact that they change so often.

Q. What changed so often? A. The buttons. Different times, different locals.

Q. Do you mean to say that the Local 807 buttons changed so often? A. I don't know how often they changed.

Q. Are you talking about buttons that changed in other localities? A. Both.

Q. And do you mean that the Local 807 button changed frequently also? A. Well, different men had different type buttons. Some of them had buttons that they had gone out and had at different places—gotten at different places.

Q. A Local 807 button? A. That had "Local 807" on 3674
them in bright colors.

Q. In December of 1936 did you see what you call 807 buttons, Local 807 buttons, that differed from each other? A. Yes, they weren't all buttons. Some of them were pins stating "Local 807."

Q. Will you kindly distinguish for us what you mean is the difference between a pin and button? A. Well, a pin had a clasp which held it firmly in place, and the pin was a straight pin going straight through the garment—had the button with a circular pin which came out to a straight point and came straight down.

Q. Now will you describe the pin with the clasp? A. The pin with the clasp was usually a bright composition with the word "Local"; the background was usually blue, the lettering white and the numerals white. 3675

Q. Now what is the other insignia that you claim of Local 807 that you saw? A. I don't remember exactly.

Q. What did it look? A. It looked like an ordinary button about the size of a quarter, between a nickel and a quarter.

Q. And how large was the other insignia that you saw? A. They were different sizes and shapes.

Q. Do you mean that each truck driver wore an emblem that was different in size and shape? A. No.

Q. What do you mean? A. I mean part of them had those emblems or pins which were different from the others.

Q. Well, how large was the largest insignia that you saw that you say was a Local 807 insignia? A. About the size of a half-dollar.

Q. Half-dollar? A. Yes.

Q. And how large was the smaller one? A. The smaller ones were about the size of a nickel; between a nickel and a quarter.

Q. Now when this discussion took place with you about
3677 someone telling you that they would put sand in your crankcase if they knew where you were parked, how many persons were present at that time? A. Five or six.

Q. You don't know any of them? A. I would not try to connect a face with that one particular incident.

Q. You can't identify anybody with respect to that incident; is that correct? A. Right.

Q. Now, you have testified here, did you not, that sometime in December you talked to Campbell? A. Yes.

Q. Had you employed Local 807 men before you spoke to Campbell? A. We had not employed them; they had forced themselves on us——

Mr. Murray: I move to strike out the answer.

The Court: Strike out after "We had not em-
3678 ployed them."

Q. Did you employ them? A. No.

Q. Did you pay them? A. Yes.

Q. Did they work on your trucks? A. They rode the back of the truck usually; very little work.

Q. Did they work on it? A. Very little.

Q. Did they do any work on it? A. Yes.

Q. And was that before you ever met Campbell or talked to him? A. Yes.

Q. Is that correct? A. Yes.

Q. How long before that? A. Approximately all during the 30 days prior.

Q. You mean before December of 1936? A. Yes, sir.

Q. Well, did you talk to anyone on December 1st, 1936? A. No, sir.

Q. When was the first time that you claim to have talked to Mr. Campbell? A. Between the 10th and the 15th of December.

Q. Now you realize, don't you, that you have testified here to incidents that occurred, a number of incidents? A. Yes.

Q. And on a number of occasions? A. Yes. 3680

Q. At various times? A. Yes.

Q. And at various places? A. Yes.

Q. That is correct, isn't it? A. Yes.

Q. Now did you ever make any memorandum of those times or places where these incidents occurred? A. No, sir.

Q. Have you got any memorandum? A. No.

Q. Now? A. No.

Q. Have you got any office records that will show the time or the place of these incidents? A. No.

Q. Do you keep books? A. Yes, sir.

Q. Did you keep a record of what you claim to have paid to these union men? A. Yes.

Q. Did you ever pay by check? A. No.

Q. Did you get receipts? A. Yes. 3681

Q. Have you got the receipts? A. Not with me, no, sir.

Q. Where are they? A. They were destroyed.

Q. When were they destroyed? A. At the end of each trip or the end of each month.

Q. Didn't you require them to keep the books of account? A. Yes.

Q. Did you destroy them before you made an entry in your books? A. No, sir.

Q. Do those payments now appear on your books? A. Yes.

Q. Did you get receipts for payments that you or your drivers made, say, in the month of May, 1938? A. Yes.

Q. Up to the 1st of June, 1938? A. Yes, sir.

Q. Do you have receipts showing payments that were made in April of 1938? A. Yes, sir.

Q. Did you testify before the grand jury? A. Yes.

Q. When?

Mr. Cahill: Objected to as immaterial.

The Court: I will allow him to answer when.

3683 A. It was in the latter part of 1938.

Q. The latter part? A. That is right.

Q. What is your conception of the latter part?

Mr. Cahill: I object to the pursuit of this inquiry, your Honor, as to the action of the grand jury or testimony before it.

Mr. Murray: I am not looking for the testimony before it.

The Court: He cannot disclose what testimony was given there, but this goes to the question of the recollection of the witness as to the facts of details, and I think in view of the situation here as to when certain things happened, to the extent
3684 to which they have been definitely particularized, that it is proper to cross-examine the witness for the purpose of showing what his recollection is as to dates and details.

You may answer.

A. This was, I think, in October.

Q. In 1938 that you testified before the grand jury, is that correct? A. To the best of my memory it was around October. It could have been one month either way.

Q. That is, it might have been November; it might have been September? A. Yes.

Q. Within the three months, September, October or November of 1938? A. Yes.

Q. Do you know whether or not you testified before the grand jury before the indictment in this case was handed down? A. I think it was in connection with the indictment.

Q. If I told you that the indictment was handed down on or about the 31st day of May, 1938, would that help you to fix the time when you testified before the grand jury? A. I have no way of connecting that time since no events of my own tie up with that particular date.

3686

Q. Well, did you learn that an indictment had been handed down? A. Yes.

Q. When did you learn that? A. I don't know.

Q. Did you learn it, say, from reading the press? A. Yes.

Q. And did you read the press around the first part of June, that an indictment had been handed down in this case? A. I don't remember the time but I did read it. It came out in the "Transport Topics."

Q. Now is it a fact that you testified before the grand jury in April of 1938? A. I would not say definitely.

Q. But you did say definitely, did you not, that it was either September or October or November of 1938, didn't you? A. I said I thought it was; I wasn't positive.

Q. Are you certain now when it was? A. No, sir. 3687

Q. But at any rate when you testified before the grand jury did you have any of those receipts that you say that the men got as payment for their services?

Mr. Cahill: That I do object to.

The Court: Sustained.

Mr. Murray: Exception, if your Honor please.

Q. Now do I understand you to say that at this conversation with Mr. Campbell around the middle of December, 1936, that you said that you were not making enough trips to New York to justify the employment of Local 807 men? A. Of a steady man, yes, sir.

Q. Was that substantially what you said to him? Was it? A. Yes.

Q. At that time how many trips a week were your trucks making to New York? A. From four to six.

Q. And did a truck come in nearly every day, every working day of the week? A. No, sir.

Q. But on some weeks did some six trucks come in? A. Yes, sir.

3689

Q. That was a truck every day, wasn't it? A. No, sir.

Q. You mean that on some days more than one truck rolled? A. Yes.

Q. Well, on an average how many trucks a day reached New York from Carolina? A. On Mondays there were from two to three; and on Tuesdays there were none; Wednesday there was usually none; on Thursday and Friday and Saturday there was from one to three.

Q. Well, were the drivers of your trucks union men? A. No, sir.

Q. You don't have any union drivers in the South, do you?

Mr. Cahill: Objected to.

The Court: Sustained. We are not going to try

3690 the economic conditions in the South in this case.

Q. Were any of your helpers members of unions? A. No, sir. At that time we had no unions in the South.

Q. Thank you. Now how large a truck was it that usually rode into New York carrying your freight? A. We had them with bodies from 12½ feet to 24 feet.

Q. And do you know how long it took to make the trip between High Point, North Carolina, to New York City? A. From 16 to 20 hours.

Q. Was that continuous driving? A. No, sir.

Q. Well, when one of your truck drivers left High Point, North Carolina, what time did he ordinarily start out for New York? A. He started out from there at about five or six o'clock in the afternoon.

Q. Then did he drive all night? A. The man that started did not, no, sir.

Q. Well, do you know whether or not the truck rolled all night? A. It did.

Q. And the truck rolled for about how many hours before it reached New York? A. From 16 to 20 hours.

Q. That was without any stop off, wasn't it? A. No, sir.

Q. Did you provide a place for your men to stop off? 3692
A. I did.

Q. And go to sleep? A. Yes, sir.

Q. Where? A. Richmond, Virginia; Washington, D. C., New Brunswick, New Jersey.

Q. You mean that they made three stop offs before they reached New York? A. Yes, sir.

Q. And went to bed? A. No, sir.

Q. Well, where did they go to bed? A. New Brunswick, New Jersey.

Q. Do you know how long it ordinarily takes one of your trucks to get from High Point, North Carolina, to New Brunswick, New Jersey? A. From 15 to 18 hours.

Q. So either one or the other of the drivers of your truck was operating it for 15 or 18 hours; is that right? 3693
A. No, sir.

Q. Beg pardon? A. No, sir. They worked in shifts.

Q. I said one or the other. A. But neither of them was working 15 to 18 hours.

Q. Either one or the other of your drivers, or your driver and your helper during that 18-hour trip was operating your car, is that correct? A. Yes.

Q. Do you know how far New Brunswick, New Jersey, is from New York City? A. New Brunswick is approximately 540 miles——

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The Court: No, New Brunswick from New York City.

The Witness: 28 miles.

Q. Well, was it New Brunswick, New Jersey, that they stopped over to sleep in? A. Yes.

Q. Do you know what time ordinarily the loads were delivered in New York? A. They would arrive in New York around 8 o'clock in the morning and unload until they were unloaded.

Q. What time did the drivers go to bed? A. They would go to bed the previous night at any time they desired.

3695 Q. But not until they reached New Brunswick, New Jersey? A. Yes, sir, that is correct.

Q. After a 15 or 18-hour trip? A. Yes, sir. They had sleeping quarters on each truck; one man slept while the other drove.

Q. Now, just where were the sleeping quarters on the trucks? A. In the front of the trailers.

Q. Beg pardon? A. In the front of the trailers.

Q. You mean, was there a bed there? A. Yes, sir.

Q. Or a cot? A. Yes.

Q. With bed clothes? A. Yes, sir, springs, and inner spring mattresses.

The Court: Is there anyone of the jury who objects to staying to about a quarter to five?

3696 (No response.)

Q. Now, when you leased trucks from Dickerson and Local 807 men were employed on the trucks, did you pay $9.42 to them? A. I did not lease the trucks. I hired them to make pickups and deliver, so much per 100 pounds, with Dickerson furnishing the driver.

Q. Well, who paid, if a Local 807 man worked on that truck, either loading or unloading; who paid the Local 807 man? A. Dickerson.

Q. You did not? A. No.

Q. Now, did you require a license to truck wine?

Mr. Cahill: Objected to as immaterial.

The Court: May I hear the question, please.

(Question read.)

The Court: Oh, I will sustain the objection.

Mr. Murray: I except.

Q. Now, do you know whether or not Dickerson owned his own trucks? A. He did not.

Q. He was what was called a broker, is that right? A. Yes, sir.

Q. And then if you wanted to lease a truck from him, 3698
he went out and hired it from somebody else, is that correct?

Mr. Cahill: I object to the use of the word "lease" as contrary to the——

The Court: The witness has already said that he did not lease, but the question is what he would do if he wanted to lease, and I am perfectly willing that he answer the question.

Mr. Murray: All right, your Honor, if there is any quarrel about the term, I will call it "hire" instead of "lease."

Q. When you wanted to hire a truck you hired it from Dickerson as a broker, is that right? A. That is right, yes. 3699

Q. And did you have any contract with Dickerson? A. Yes.

Q. A signed contract? A. No, we did not sign any contracts; it was a gentleman's agreement.

Q. Did you ever have any writing with Dickerson at all concerning these hired trucks? A. Yes.

Q. When? A. When we first went into the terminal.

Q. And that was when? A. That was in September or October of 1937.

Q. Have you got that writing? A. No, sir.

Q. Do you know whether or not it is in existence? A. I do not.

Q. When did you last see it? A. When we moved it from the terminal.

Q. Now, when did you first ever see Edward Weinheimer? A. I don't know.

Q. Do you know what month it was? A. No, sir.

Q. Or what year? A. No, sir.

Q. Have you got any idea of what month or year it was when you first saw him? A. The best I remember is in 1937.

3701 Q. When for the first time did you talk to Edward Weinheimer? A. I don't know.

Q. Do you recall what year it was? A. I think it was 1937.

Q. What part of 1937 do you think it was in? A. The latter part.

Q. Do you mean around November or December? A. Yes.

Q. And where was it that you first ever talked to him? A. I don't remember, but I think it was 304 Spring Street.

Q. Well, do you recollect whether or not before I started the cross examination that you told the district attorney where you had first talked to him? A. I think that the first time that I ever saw him was West 25th Street, but at that time I didn't know him.

3702 Q. My question is addressed as to when you first talked to him. A. I don't remember.

Q. Do you remember whether or not you told the District attorney on your direct examination as to when you first talked to Ed Weinheimer? A. 304 Spring Street.

Q. I say when? A. During the period of September through February; the latter part of 1937, the first part of 1938.

Q. Is that the best you can do to fix the time? A. Yes.

Q. Did you talk to him more than once during that period? A. Yes.

Q. How often? A. I don't know.

Q. Where? A. 304 Spring Street.

Q. Always at 304 Spring Street? A. Yes.

Q. Now, by the way, where was this warehouse where you had the conversation about the loading of the wine? A. 304 Spring Street.

Q. And do you know whose warehouse it was? A. Dickerson's.

Q. Where did you have the conversation about someone telling you that they might put sand in your crankcase? A. 304 Spring Street.

3704

Q. Where did you have the conversation with Campbell for the first time? A. 516 West 25th Street.

Q. Do you say that you ever talked to the defendant Austin Furey? A. No.

Q. Do you remember ever having seen Austin Furey? A. Yes.

Q. Where? A. He was with Campbell.

Q. And when was that? A. December of 1936.

Q. Well, did Mr. Campbell tell you who he, Campbell, was at that time? A. That he was a representative of Local 807.

Q. Did he say he was a delegate? A. I don't remember whether he did at that time or not; I don't think he did.

Q. Do you know whether or not he or Furey said that Furey was a delegate in December of 1936? A. No, sir; 3705
they didn't introduce themselves.

Q. Or in January of 1937? A. No, sir.

Q. Do you happen to know that Furey was not elected a delegate until April, 1937? A. I don't know that he was ever a delegate.

Q. Do you happen to know that Campbell was not elected a delegate until January of 1937? A. I don't know that he was a delegate. He did not represent himself as a delegate.

Q. Did he represent himself as a driver? A. No.

Q. Did he have one of those buttons with Local 807 on it? A. No, he was dressed in a business suit.

Mr. Murray: May we stop now?

The Court: Are you going to be much longer?

Mr. Murray: I think I am, your Honor.

Mr. Cahill: If your Honor please, my attention is called to the fact that we have had the witness here since Thursday night, and he is due, as I understand it, to testify before the Interstate Commerce Commission in the morning in Baltimore. Now, there has been a little delay here, and if we can
3707 finish with him, I would appreciate counsel trying to finish it.

The Court: Well, how long do you anticipate it will take?

Mr. Murray: Your Honor, I am in this position: I have had no opportunity whatever, if your Honor please, to look up any data concerning this incident: so I am at that disadvantage. Overnight perhaps I might be able to accomplish something.

The Court: Well, is it agreeable to begin tomorrow at 10 o'clock? Does anybody object to it?

(No response.)

The Court: 10 o'clock tomorrow; and I do not suppose that this witness is the only witness who is
3708 to appear before the Interstate Commerce Commission; I don't know.

The Witness: No, sir, your Honor, but it happens to be my hearing. I have an attorney there from Jacksonville, Florida.

Mr. Cahill: He has brought the attorney up, as I understand it, at his own expense for this hearing tomorrow.

The Witness: The witnesses are subpoenaed there also.

The Court: Well, you are not afraid to fly, are you?

The Witness: No, sir.

The Court: Well, you can get out of here in the morning, and I am sure the Interstate Commerce Commission will respect the engagement in this court.

Mr. Cahill: Might I inquire through the Court what time his engagement is?

The Witness: Mine is 10 also.

Mr. Cahill: Would it meet with the approval of the Court to suspend his examination for one day?

The Court: I have no objection.

3710

The Witness: If your Honor please, I have this hearing in Baltimore tomorrow and Philadelphia Thursday and New York Friday.

The Court: Would you rather come back here to New York?

The Witness: Yes, sir.

The Court: After your three hearings before the Interstate Commerce Commission are over?

The Witness: Yes, sir.

Mr. Murray: I have no objection, if your Honor please.

The Court: All right, we will suspend the further cross examination of this witness until Friday.

What time will you be through?

3711

The Witness: 2 o'clock.

The Court: Friday, 2 o'clock, here.

Mr. Cahill: Thank you, your Honor.

The Court: And you can be prepared in the morning to go on with some other witness.

Now do the jury want to come at 10 or 10.30?

A Juror: 10 o'clock.

The Court: All right, 10 o'clock tomorrow. We have got to make up a little time here.

(Witness excused to Friday at 2.00 P. M.)

3712 *Howard A. Miner—For Government—Direct.*

(The jury left the courtroom.)

The Court: Let it be noted on the record that I directed the commitment of Waskiewicz, in the custody of the marshal.

(Adjourned to May 1, 1940, at 10.00 A. M.)

New York, May 1, 1940.
(10 A. M.)

TRIAL RESUMED.

3713 (The roll of the defendants was called and all present.)

The Court: The mid morning recess will be at 11.30 instead of 11.45 because we are beginning a half hour earlier.

HOWARD A. MINER, of 1151 Central Avenue, Bridgeport, Connecticut, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks:

Q. Mr. Miner, what is your present occupation? A. Freight solicitor.

Q. For what company? A. For the Standard Express
3714 of Terryville, Connecticut.

Q. That is a trucking company? A. Yes, sir.

Q. How long have you been in the trucking business? A. Thirty years. My father was in the trucking business before me.

Mr. Murray: I move to strike it out.

The Court: Strike it out. Let the answer as to the period stand.

Mr. Cahill: May I be excused for a moment, your Honor? I am wanted in another courtroom.

The Court: Yes, sir.

Q. Were you ever associated with Reliable Motor Lines, Inc.? A. Yes.

Q. Where did that company have its main office? A. Norwalk, Connecticut.

Q. What position did you occupy in that company? A. President.

Q. When was it organized? A. 1935.

Q. And how long did it continue in business? A. Approximately a year and a half; two years at the most. 3716

Q. Do you remember when it went out of business? A. 1937; the early part of 1937, I believe; the summer of 1937.

Q. How far is Norwalk from New York City? A. 44 miles.

Q. Did your company carry general commodities, or did you specialize in some particular type of freight? A. General commodities.

Q. Between what points did you haul? A. Bridgeport, New York, Brooklyn, and as far as Newark.

Q. How many trucks did you operate in 1936 and in 1937 while you were in business? A. Nine.

Q. Approximately how many trucks a day on an average did you have in New York City? A. Two.

Q. Did you have a call station in the City? A. I had an office on Tenth Avenue. 3717

Q. Was that a terminal? A. No. It was a store.

Q. Were your over-the-road drivers members of any union? A. 443 Bridgeport.

Q. All of them? A. Every one of them.

Q. Now, in 1936, during the greater part of the year did your drivers unload their own merchandise in the City here?

Mr. Murray: I object, if your Honor please.

The Court: Unless he knows personally.

The Witness: Yes, sir.

Q. You do know? A. Yes, sir.

Q. Can you tell us about what time of the day your drivers left Norwalk for New York? A. Between 4 and 5 o'clock in the morning.

Q. When they left at 4 or 5 o'clock in the morning, when on the average did they arrive back in Connecticut from New York City? A. Around 9 or 10 o'clock.

Q. The same evening? A. Yes, sir.

3719 Q. When they made a trip like that did the same driver return to New York City the following day? A. No, sir.

Q. What did he do the following day? A. He reported to the garage in the afternoon. If there was any work for him to do, why, he done it.

Q. Where? A. At Norwalk.

Q. Did there come a time, Mr. Miner, when your own drivers ceased to do the unloading and the pickups in New York City? A. Yes, sir.

Q. When was that? A. When my New York man told me that Local 807 was there and would not allow us to operate in New York without an 807 man on the truck.

Mr. Murray: I move to strike it out, if your Honor please.

3720 The Court: Strike it out. You were asked as to a time; not when somebody said something to you.

Q. Do you remember when in point of time? A. Definitely, I don't remember.

Q. What year? A. 1936.

Q. Do you remember what month? A. Around August.

Q. Now, at that time did you have any telephone conversations with any people? A. With my New York manager.

Q. And with anyone else? A. No, sir.

Q. Dd you make a trip to New York City around that time? A. Approximately a week later.

Q. Whom did you see in New York City?

Mr. Murray: I object, if your Honor please.

The Court: I will allow it.

Mr. Murray: Your Honor, the basis of my objection is that this witness is testifying to acts of August, 1936.

The Court: I will allow it.

Mr. Murray: Exception.

3722

Q. Whom did you see in New York City, Mr. Miner? A. Jack Horan.

Q. Anyone else? A. And my man, Sam O'-H-a-r-a.

Q. O'Hara was in your employ? A. That is right.

Q. Did you see anybne else? A. I can't recall that.

Q. Do you see Horan in this courtroom? Will you stand up and look around? A. (Standing) Yes, sir.

Q. Will you point him out, please. Where is he sitting? A. In that aisle over there; he is the fourth gentleman, not counting the clerk, if that is the clerk. The third gentleman in that first aisle (indicating).

Q. Is that the bench facing you? A. Correct, sir.

(A man stood up)

3723

Q. Is that the man that is now standing? A. That is Jack Horan.

Mr. Marks: May the record indicate that the witness has identified John Horan?

The Court: The record may indicate that a person arose at the time or immediately before you asked the question which you did.

Mr. Marks: Yes, sir; and that that person was John Horan, the defendant?

The Court: Well, if there is any doubt about it the clerk can call the name John Horan.

The Clerk: John Horan.

(A man stood up.)

The Court: Is the person who is now standing the person whom you know as John Horan?

The Witness: Yes, sir.

Q. Mr. Miner, do you remember whether at the time you first met Horan in New York City you had made any payments of money to him? A. No, I don't remember that.

3725 Q. Where did you meet him in the City? A. At my office.

Q. At Tenth Avenue? A. Correct.

Q. Did you have a conversation with him there? A. Yes.

Q. Will you tell us what that conversation was? A. About employing 807 men to work in New York for my company, and I agreed to do it.

Q. Well, tell us what he said and what you said as best as you can remember it now? A. Well, he said that we would not be allowed to operate any longer in New York without Local 807 men on the trucks; and I objected——

Q. Just tell us what you said, Mr. Miner. A. Well, I told him that I did not think I could stand the overhead, and operating within a radius of 50 miles from New York, it wasn't fair that my men according to the hours of labor

3726 were home early enough and did not put in enough hours in a day to constitute additional help in New York; and he just simply said that he did not think we could go on without 807 men.

Q. He said? A. Yes. So I told him we would try it. That is all I can remember.

Q. Do you remember whether there was anything said about your own drivers in that conversation? A. Not being allowed to deliver in New York without 807 men.

Q. Do you remember anything else? A. No, I can't remember anything else.

Q. Do you remember whether there was anything said about any other union? A. 443 was not recognized in New York at that time.

Q. What was said about that? A. That they would not be recognized in New York.

The Court: Who said that?

The Witness: Horan.

Q. What did you tell him about 443 before he said that? A. That I believed that they were allowed to deliver in New York City; that 443 at Bridgeport led me to believe 3727
that it would be all right for them if they came down here to deliver and made pickups.

Q. And what did he say? A. That they were not going to allow it.

Q. And do you remember anything else in that conversation? A. No, I don't.

Q. Was there anything said about financial matters? A. Well, we made an agreement with reference to the amount of men that 807 was going to have on the job and how much I was going to pay.

Q. Well, what was said along those lines? A. Well, I asked them what they wanted, and they agreed to go along with me at $50 a week for two men.

Q. $50 per man or for both men? A. $50 a week per man 3729
for two men, and I told him there was plenty of days there would not be two trucks in New York City; so he said, "Well, two men will have to be paid." So I agreed to try it.

Q. Now, have you told us all of the conversation that you can now remember? A. That is about the extent of the entire conversation.

Q. After that conversation did you make any payments to Horan and anyone else? A. We made payments to Horan and a man by the name of Mitchell.

Q. How much? A. $50 a week apiece.

Q. Do you know who Mitchell was? A. At that time I did.

Q. Did you select Mitchell to work on your trucks? A. No, sir.

Q. Did you have any conversation with Horan about that? A. No, sir.

Q. Do you know how Mitchell came to work on your trucks? A. Well, I believe Horan brought him there.

Q. Now, for about how many weeks, if you remember, did you continue to pay Horan and Mitchell at the rate of $50 a week each? A. About a month and a half.

3731 Mr. Marks: May I have this marked for identification?

The Court: Yes.

(Marked Government's Exhibit 38 for Identification.)

Q. I show you Government's Exhibit 38 for Identification and I ask you if that is your signature on that paper (handing). A. Yes.

Q. Did you see Horan at about the time you signed that paper? A. I did, sir.

Q. Where? A. At my office.

Q. In New York or Norwalk? A. In New York.

Q. Did you have a conversation with him at that time?

3732 A. I did.

Q. Do you remember who else was present? A. A man by the name of John Connolly.

Q. Anyone else? A. That is all.

Q. Do you remember when that conversation was? A. Around December.

Q. Of 1936? A. Yes, sir.

Q. Now is there any particular conversation you had with Horan between the time you first met him in New York City and this conversation in December, 1936?

The Witness: Will you repeat that again, please?

Q. (Read.) A. Not that I can remember.

Q. Did Mitchell continue to help you during the entire period up to December, 1936?

The Court: He has already testified that Horan and Mitchell were paid by him for about a month and a half after their employment, which I took to be some time in August.

Is that correct?

The Witness: Yes, sir.

Mr. Marks: May I have the last question read? 3734

The Court: Yes.

Q. (Read.) A. Yes.

Q. Now will you tell us the conversation you had with Horan at about the time you signed Government's Exhibit 38 for Identification. A. Well, Horan was continuously trying to——

The Court: No, you were asked about a conversation.

A. (Continued) Well, the conversation was in reference to my signing a contract with 807.

Q. What did Horan say about that? A. Horan asked me when I was going to sign the contract, and that it was necessary that I would sign the contract because the delegates was asking him for a contract from my company. 3735

Q. What else did he say about your signing a contract? A. That it was necessary to have a contract signed if we wanted to go on and operate.

Q. Is that what he said? A. I believe that is correct.

Q. Now, what did you answer him, Mr. Miner? A. In that particular case there was no choice in the matter; I signed the contract.

Mr. Murray: I move to strike it out.

The Court: Strike it out.

Q. Is that what you told him? A. I told him I would sign the contract.

Q. And you did? A. I did.

Q. Do you remember where you signed it? In a tavern on Tenth Avenue.

Q. And was there any delegate present? A. No, sir.

Q. How many copies did you sign, if you remember?

The Court: Is that material?

Mr. Marks: I think it may be, your Honor.

3737 The Court: Well, if it may be we will exclude it. If it is, I will allow it.

Mr. Marks: I withdraw the question.

Q. After you signed that paper did you receive a copy of it? A. I did.

Q. How long after? A. Approximately ten days.

Mr. Marks: I now offer in evidence Government's Exhibit 38 for Identification.

The Court: Show it to counsel.

(Document handed to defense counsel.)

(Government's Exhibit 38 for Identification received in evidence.)

3738 The Court: At this point let me say, as I assume, as a matter of fact, the jury will understand, the indictments in this case charge a conspiracy allegedly commenced on or about December 1st, 1936. I have allowed testimony by this witness prior to December the 1st, 1936. That is not to establish the existence of a conspiracy, but that testimony was taken as against one of the persons whom the witness identified and is a defendant here, John Horan; and that testimony was taken for the purpose of indicating

whether or not there were facts that might be considered as evidencing or indicating an intent on the part of that defendant.

Mr. Marks: May I read to the jury, your Honor, just a few pertinent parts of this exhibit?

The Court: Yes.

Mr. Marks (addressing the jury): This paper, ladies and gentlemen, Government's Exhibit 38 in evidence, bears the date of December 14, 1936, and purports to be an agreement entered into between Reliable Motor Lines, Incorporated, and Local 807. It is signed for the firm of Reliable Motor Lines, H. J. Miner, president; for Local 807, William J. Campbell. 3740

Q. Mr. Miner, do you know anyone named Joseph Deegan? A. Yes, sir.

Q. Do you see him in this court room? A. (Witness indicates.)

(A man stood up.)

Q. Is that the man who now arose? A. Yes.

Q. Did you make any payments to him? A. Yes, sir.

Q. Do you remember when you first made such payments approximately? A. Around the latter part of December, 1936.

Q. The latter part of December? A. Yes, sir. 3741

Q. Do you know how he came to work on your trucks? A. I believe Mitchell left my employ and Deegan was the next man shaping the job, and therefore he was hired.

Q. Will you tell us what you mean by "shaping the job"? A. Well, he would report to my office looking for employment, and if there was none available there, I don't know what he done then, but it so happened that after reporting there during the time that Mitchell was work-

ing, naturally when Mitchell reported he was going elsewhere, my man in New York put Deegan to work.

Q. Did you select Deegan as a shaper for the job? A. No, sir.

Q. Now, do you remember having any conversations with Horan and Deegan in the early part of 1937? A. Yes, sir.

Q. Can you fix the place of any such conversation? A. My New York office.

Q. And the approximate time? A. No, I don't know that.

Q. Well, the month? A. The latter part of January I
3743 would say, or the first part of February; somewheres around there.

Q. Will you tell us the substance of the conversation? A. I believe the conversation was in reference to the additional overhead of New York labor.

Q. Well, tell us as best as you can now remember it what you said and what either one of them said? A. Well, I told Joe and John Horan that I didn't think I could carry the overhead, that it was causing too much hardship and additional payroll; I was a small operator and I didn't have enough business at that time to carry it, and I told them I didn't know how much longer I was going to be able to go on. That is all I can remember.

Q. Who answered you, do you remember? A. I believe both of them had something to say.

3744 Q. What did they say? A. Well, the remark on either side was similar to the fact that if I didn't go on and closed my doors, they would just get a job with somebody else.

Q. Can you remember any further part of that conversation? A. No, I can't say I do.

Q. Do you remember how much you paid them in the early part of 1937? How much per week? A. I paid them the union scale of wages.

Q. Can you recollect any other conversations with either Horan or Deegan after the one of which you have told us? A. At a later date I had some talk with Joe Deegan in reference to how tough it was and it looked like I was going to close my doors.

Q. When was that? A. Possibly a month later.

Q. What did you say and what did he say? A. Well, he said, "Why not go to the bank and get $25,000? You will come out of it. It will be all right." I told him I didn't believe there was any chance of me getting $25,000, and I would have to stop operating.

Q. Did you stop operating? A. I went into bankruptcy, yes. 3746

Q. When? A. Around the summer of 1937. I believe around June of 1937.

Mr. Marks: That is all.

The Court: Cross-examine.

Cross-examination by Mr. Murray.

Q. Had your concern been in financial difficulties before December, 1936? A. I don't believe so.

Q. Well, when did you first get into financial difficulties, or at least when did your concern first get into financial difficulties? A. Around January or February of the following year.

Q. You mean January of 1937? A. I believe that is correct. 3747

Q. That was the next month after December, of course, of 1936?

The Court: Well, we will take judicial notice of that.

Mr. Murray: May I have the contract?

(Mr. Cahill handed Mr. Murray a paper.)

Q. You recollect, do you not, that you signed this contract, Government's Exhibit 38, on December 14, 1936, is that correct? A. That is correct.

Q. And the next month you began to have financial difficulties, is that what you say? A. Around January or February, 1937.

Q. Yes; about a month after you signed this contract? A. About a month later.

Q. Now, between December 14, 1936 and say the middle of January, 1937, how many men did you employ from Local 807? A. Two.

Q. And between December 14, 1936, and say the middle
3749 of January, 1937, how much money had you paid those men, or Horan and Mitchell? A. About a month's salary.

Q. And in dollars and cents could you tell us what that would amount to? A. $500 or $600; around $500 or $600.

Q. Now, you say you were in financial difficulties in January, is that right? A. Yes.

Q. In December of 1936 how many trucks were operating? A. Nine.

Q. Large trucks were they? A. Yes.

Q. Did your concern at that time own the trucks? A. They were on chattel mortgage.

Q. Is it true that you had purchased them on the instalment payment plan? A. On notes, yes.

Q. And when had you purchased the last of those trucks before the middle of January, 1937? A. I don't remember
3750 that.

Q. When did the Reliable Express Company come into being? A. The summer of 1935.

Q. And at that time how many trucks did you have? A. Three.

Q. Were those trucks purchased on notes? A. Yes.

Q. And were you still attempting or endeavoring to pay off those notes in January, 1937? A. I believe so.

Q. So is it precise to say that in January, 1937, you didn't own any of your trucks free and clear? A. That is correct.

Q. Now, when did you go out of business? A. 1937.

Q. Was that about the middle of 1937? A. The summer of 1937; June.

Q. June of 1937? A. Yes.

Q. So that you for about a period of six months had been doing business with Local 807, is that right? A. Yes.

Q. Now, in June of 1937 did you go into bankruptcy? A. Yes, sir.

Q. Had there been foreclosures on your trucks for failure to meet your notes? A. Not that I can remember.

Q. Well, what became of the trucks? A. At that time—oh, yes; pardon me; at that time, yes.

Q. Now, say in January or February of 1937, were you 3752
in difficulty at that time about paying the notes on your trucks? A. Yes, sir.

Q. Were there occasions when the marshal in New York sought your trucks to seize them and Horan hid them? A. I wouldn't know that.

Q. Did you ever talk to Horan about such a situation? A. Where the marshal had seized one truck.

Q. When did the marshal seize one? A. I can't recall that.

Q. Was that in January of 1937? A. I couldn't recall that.

Q. Well, was it a month after you had first employed Horan and Mitchell? A. I don't believe so.

Q. Well, can you fix the time considering January 1, 1937 as the starting point? A. No, I wouldn't be able to 3753
recall the time that they attached that truck.

Q. Were the relations between you and Horan friendly? A. Oh, yes.

Q. Were the relations between you and Mitchell friendly? A. Yes.

Q. You spoke about employing Joseph Deegan? A. Yes.

Q. Do you remember now when you first employed him? A. I believe the latter part of December.

Q. Well, wasn't it in fact on March 12, 1937? A. That may be correct.

Q. Wasn't it about three months before your concern went into bankruptcy? A. Yes, sir.

Q. Now, you had known Mr. Deegan for years, hadn't you? A. Yes.

Q. He was a personal friend of yours, wasn't he? A. A neighborhood school boy friend.

Q. Well, the relations between you and Mr. Deegan were frendly, were they not? A. That is right.

Q. As a matter of fact when Mitchell left didn't you request that Deegan should be employed in his place? A. I don't believe it was that way.

3755

Q. Pardon me? A. I don't believe that is correct.

Q. Well, isn't it a fact that you yourself contacted Deegan before he went to work for your concern? A. No, I don't remember that, but when the report came through that Deegan was working for me I O.K.'d it, yes.

Q. Well, didn't you have a conversation with Deegan shortly after his employment in which you in substance said to him that you were glad he was working for you because there might be some difficulty about paying the wages? A. I don't recall the latter question.

Q. Well, do you recall whether or not Deegan was paid by checks that were returned dishonored? A. I believe there were a couple of checks that were dishonored.

Q. Well now, Mr. Miner, you say that the only trucking
3756 that was done by the Reliable concern was trucking between Norwalk and New York? A. We also went to Boston.

Q. Well, didn't your concern truck from New Haven to New York? A. I don't believe so.

Q. From Bridgeport to New York? A. Yes.

Q. Did you sometimes truck from Boston to New York? A. From New York to Boston.

Q. Well now when Horan, Deegan and Mitchell worked for you they worked six days a week, didn't they? A. Yes.

Q. 8 hours a day? A. Yes.

Q. And in the first instance when they began to work for you, that is Horan and Mitchell, they worked for $50 a week, didn't they? A. That is right.

Mr. Murray: That is all.

The Court: Any further cross-examination.

(No response.)

The Court: Any redirect examination?

Mr. Marks: Will your Honor bear with us a moment? 3758

(Conference among Government attorneys.)

Mr. Marks: No further redirect, your Honor.

LILLIAN P. MINER, of 1151 Central Avenue, Bridgeport, Connecticut, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

Q. Mrs. Miner, were you formerly an officer of the Reliable Motor Lines, Inc.? A. Yes, sir.

Q. Try to talk a little louder now. What office did you hold? A. Secretary and treasurer. 3759

The Court: I am afraid you will have to speak louder than that.

The Witness: Secretary and treasurer.

Q. Do you remember when the company went out of business? A. July, 1937.

Q. And do you remember making a visit to New York shortly before that time? A. Yes, sir.

Q. Did you have a conversation in New York? A. Yes, sir.

Q. With whom? A. Well, I don't recall exactly which one of the drivers it was, but it was one of the two drivers that worked for us at the time.

Q. One of which two? A. Well, either Mr. Horan or Mr. Deegan.

Q. Do you know both Deegan and Horan? A. Yes, sir.

Q. Will you stand up and see if you can find them in the court room? A. (witness standing) That is Mr.
3761 Deegan there (indicating).

(A man stands.)

A. (Continuing) And that is Mr. Horan (indicating).

(A man stands.)

Mr. Marks: May the record show that the defendants Deegan and Horan arose?

The Court: Yes, and she identified them.

Q. Can you remember with which one of the two you had this conversation? A. No, I don't recall which one.

Q. Were they both present or only one there? A. I think only one.

3762 Q. What month was that conversation? A. I wouldn't know that exactly. A couple of months——

The Court: How long before the company suspended?

The Witness: A couple of months before.

Q. Where was the conversation? A. In the New York office.

Q. Will you tell us what the conversation was? A. Well, I don't remember the exact words, but the idea was that the company was getting in pretty bad financial straits.

Q. Who said that? A. I did, and that it wasn't fair to the men in Connecticut, the union men in Connecticut to pay these New York men and try to give those fellows up there a decent job at the same time, because if we gave them union wages, they wouldn't make a decent week's pay at the end of the week; so that was causing us to have to pay them a weekly salary and then pay these fellows in New York at the same time, and that was too much of a drain on the company. 3764

Q. How were the union men in Connecticut paid? By the hour, by the day or by the week? A. By the week at that time.

Q. And before that time? A. Well, usually, I think they were always paid by the week; they had a weekly salary.

Q. What else did you say to this man in New York? A. Well, that was about the gist of the conversation.

Q. What did he say? A. Well, that didn't make any difference to them; we couldn't work unless we had a New York union man.

Q. Now do you remember what else you said? A. That is about the whole thing. I don't remember anything else but that.

Q. Do you remember anything else being said about financial affairs? A. Well, I think that it was mentioned 3765 that the company would probably go out of business, and they said they didn't care about that, that if we went out of business the work would go to other truckmen and they would get a job with other truckmen.

Q. Now, do you remember having any telephone conversation? A. Yes.

Q. Shortly after this conversation? A. Yes. That was more right near the end; about the end, I guess; maybe a few weeks before the last few weeks anyway.

Q. With whom did you have that conversation?

Mr. Maguire: I object to it; after May 31st.

The Court: I don't know. She can state whom she had it with.

Mr. Marks: This was 1937.

The Court: She is not being asked the conversation yet; she is being asked with whom she had it, and the next thing would be to find out when.

A. Joseph Deegan.

Q. When was this conversation, approximately? A. I think a couple of weeks before the end of the company's
3767 —I mean around the time that we went into the hand of the receivers.

Q. And you say that was July, 1937? A. I believe this was probably in June.

Q. That is, the conversation? A. Yes.

Q. Had you ever met Deegan face to face before? A. Oh, yes.

Q. And you had heard him talk? A. Yes.

Q. Did you recognize the voice on the telephone as Deegan's? A. Yes.

Q. What was the conversation? A. Well, he asked for the pay that he said was coming to him, and he enumerated what it was; and it happened to be for trips that we had sent the Connecticut drivers down to make the deliveries
3768 themselves and not bother with the New York union; and I told—he told me who he was, and I told him that as far as I knew he was not hired to make those deliveries, and therefore there was no pay coming to him; so he told me I better send it down or else the trucks would not work in New York again.

Q. Was that all? A. That is all. I hung up then. I said, "All right," and I just hung up.

Q. How long after that did the company go out of business? A. Well, we went into receivership on the 10th of June, and then we had to stop operating some time in July. I think towards the end of July.

Mr. Marks: That is all.

Cross-examination by Mr. Murray.

Q. Now, did you know that as the treasurer of the Reliable that the concern was in financial difficulties before it ever employed Horan or Deegan or Mitchell? A. No, sir. The company was getting along pretty well up to that time. 3770

Q. Well, in the early part of 1937 do you know that one of your trucks was seized for failure to pay the notes on it? A. Well, that is after they were hired.

Q. Well, was that in March of 1937? A. Possibly it might have been.

Q. Do you remember the incident of one of your trucks— A. I remember a truck was attached in New York, but that was some time after those men were hired.

Q. Are you able to tell us when it was? A. No, I don't know that exactly. I know possibly a couple of months before we went into the hands of the receivers.

Q. Now, were you secretary and treasurer of the Reliable when it was formed in 1935? A. Yes, sir.

Q. And had you been up to the time of its bankruptcy 3771 in the summer of 1937? A. Yes, sir.

Q. What capital did the Reliable start with in 1935? A. Well, it was just $2000 cash put in at that time.

Q. And who put it in? A. I did.

Q. Is that all the capital that ever was invested in the Reliable Company? A. No, sir, there was quite a bit of money put in after that.

Q. Well, were all your trucks bought on credit or at least on notes? A. Oh yes.

Q. Did you pay cash for any of your trucks? A. Paid a down payment. Never paid——

Q. Now, of those nine trucks that your concern owned and operated, how much cash did you invest in them before they came into your possession? A. Well, I think the usual arrangement is about a quarter of the value; I don't recall the amounts exactly, but sometimes it will be $1000 and sometimes it will be a little less or a little more according to the value of the truck.

Q. And then the concern would take back a chattel mortgage, wouldn't it? A. I guess so.

Q. And then you would agree to pay notes, is that right?

3773 A. Yes, that is right.

Q. Well, did you have some difficulty in paying notes in December of 1936? A. I don't remember exactly when we started. It was toward the end of that time I know.

Q. You mean December, 1936, you began to have some difficulty in making your payments? A. I don't recall the exact date, I am sorry.

Q. Did you take care of the finances of the Réliable concern? A. Yes, but I was away for quite a while. I was sick and I was away from the end of August until about December.

Q. You mean the end of August, 1936, until about December, 1936? A. Until around December or early in January, I guess it was.

Q. Well, in December or January did you have difficulty

3774 in making your payments on the notes? A. I don't really recall that. I know toward the end we had difficulty, but I wouldn't say——

The Court: Toward the end of what?

The Witness: Toward the end of the company's existence. I really couldn't say just how long before it was. A few months before.

Q. Well, you had other difficulties besides your difficulty in meeting your notes, didn't you? A. Well, toward the end I guess we had difficulty all around. Everything started to go at the same time.

Q. Didn't you have difficulties in January of 1937? I mean financial difficulties? A. Well, it was all in those few months that the thing started, January and February and March.

Q. Did you know anyone by the name of O'Hara that was employed by your concern? A. Yes, he was in the New York office.

Q. What was his full name? A. Samuel O'Hara.

Q. Was he any relative of yours? A. Well, he is Mr. 3776
Miner's nephew.

Q. Now, through him did your concern have some financial difficulties? A. Yes.

Q. When was that? A. Well, that started in September, I believe, of the previous year.

Q. That would be— A. That was September, 1936, and he kept some cash collects and a couple of C.O.D.'s; I guess the total amounted to about $300.

Q. Didn't he collect some money for your concern in New York, C.O.D.'s, and appropriate the money to his own use? A. Yes.

Q. That caused you some financial distress, too, didn't it? A. Yes, it did.

Q. Were there other incidents connected with Mr. 3777
O'Hara of where he took your cash and appropriated it to his own use? A. No, just that, the cash collects.

Q. You say he was a nephew of your husband? A. Yes.

Q. Did you ever give him money to pay your office rent in New York which he appropriated in the early part of 1937? A. No, sir, I don't recall that.

Q. Do you know whether or not early in 1937 that your concern was dispossessed in New York for the non-payment of office rent? A. Well, there was trouble about the rent,

too, but I don't remember just when that happened. That all happened all around the same time.

Q. Now, you have testified here to a conversation that you say you had on the telephone with Mr. Deegan. Do you recall that A. Yes.

Q. Do you remember when that was, that conversation? A. I think that was in June.

Q. Could it have been March of 1937? A. No, sir, it was just about the time we went into receivership, but I don't remember whether it was a week before or that same week; but it was in June.

Q. Well, did your concern issue a check to him that
3779 was dishonored because there weren't sufficient funds in the bank? A. I don't recall exactly that. I do know that at the end that somebody attached the bank account, and then checks would go bad, a couple of salary checks.

Q. Who attached the bank account? A. Somebody on the accounts payable. I don't remember just who did that.

The Court: Where was the bank account, New York or Connecticut?

The Witness: Norwalk.

Q. Now, wasn't it on March 5 or March 6, 1937, that you had had the talk with Mr. Deegan? A. Not that talk, no.

Q. Well, did you have a talk with him on March 5 or 6, 1937? A. I don't really recall; I might have.

3780 Q. Well, did you have a discussion with him at that time in which he had stated that he had worked all week, six days, and that you sent him a check which was worthless? A. It is possible; I don't really know.

Q. Will you look at this piece of paper and see if it refreshes your recollection.

Mr. Murray: The date, if your Honor please, is March 5, 1937.

A. Well, he may not have talked to me about this. He may have talked to somebody else. I don't really remember.

Q. Well, do you recognize that piece of paper? A. It is one of the company's checks, yes.

Q. And payment was not made on it, was it? A. That I couldn't say, whether it was ever made good or not.

Q. Well, when it was presented for payment there were not sufficient funds to meet the payment? A. That is right.

Mr. Murray: I will offer it in evidence, if your Honor please.

The Court: Show it to counsel. 3782

(Paper handed to Mr. Cahill.)

Mr. Cahill: We have no objection.

(Marked Defendants' Exhibit Q.)

Mr. Murray (addressing the jury): This is a check, March 5, 1937, made payable by the Reliable Motor Lines Company, Incorporated, to J. Deegan for $43.60.

Q. Now, did you know that the Reliable had signed a contract with Local 807 in New York? A. Well, I did know. I don't know just when I knew.

Q. Well, will you look at Exhibit 38 and direct your attention to December 14, 1936, and see if that helps you in determining when the contract was signed. A. Well, 3783 this shows that date, yes, sir.

Q. Now, at that time you were back in the office after your illness, were you not? A. I don't think I was back quite then.

Q. Well, in that month and before this contract was signed, was your concern in financial difficulties? A. I really can't say just when it started

Q. Well, in December of 1936 was there coal purchased by your concern in New York? A. Coal?

Q. Yes. A. Oh, I guess there was coal purchased nearly every day down there out of the petty cash.

Q. Now, isn't it a fact that coal was purchased in December of 1936 paid for by check? A. That I don't know. I thought they always paid for it out of the petty cash.

Q. Do you recollect whether or not the coal that was purchased was paid for by checks that were dishonored on presentation? A. I don't remember that, no, sir. It is possible but I don't know definitely.

3785

Mr. Murray: That is all.
The Court: Any redirect?
Mr. Cahill: No.
(Witness excused.)
The Court: Next witness.
Mr. Marks: I will call Mr. Agoes.

MICHAEL AGOES, residing at Georgetown, Connecticut, called as a witness on behalf of the Government, being duly sworn, testified as follows:

Direct examination by Mr. Marks.

3786

Q. Now, Mr. Agoes, will you keep your voice up so we can all hear what you say? A. All right.

Q. Where are you employed now? A. Mechanic for Joe Snell, Norwalk.

Mr. Murray: May I have the answer read?
The Court: Yes.
(Answer read.)

Q. How long have you worked there? A. Oh, approximately the last five months.

Q. Where did you work before that? A. Sears, Roebuck.

Q. Did you used to work for Reliable Motor Lines? A. I did.

Q. From when? When did you first start to work for them? A. Well, the early part of the spring of 1936.

Q. And how long did you work for them? A. Until the latter part of the summer in 1937.

Q. As long as they were in business? A. That is right.

Q. Now, were you a member of any union at the time that you worked for Reliable? A. I was. 3788

Q. What union? A. You mean in our section up there?

Q. Yes. A. Local 443.

Q. Was that in Bridgeport? A. That is right.

Q. You were an over-the-road driver, weren't you? A. Well, I first started with him as a mechanic, and then from mechanic, then I started driving.

Q. And did you drive between Norwalk and New York City? A. That is right.

By the Court.

Q. What union is Local 443 in? A. Bridgeport.

Q. No, but what is the name of the union? A. International Brotherhood of Teamsters.

3789

By Mr. Marks.

Q. When you left Norwalk to drive for New York, what hour did you usually start? A. 5 A. M.

Q. And in 1936 when did you usually get back? A. At night?

Q. Yes. A. Oh, we would leave the city approximately between 6 and 7, was the average, and we would get back about 9.30, 10. That is the average.

Q. The running time each way was about three hours? A. That is right.

Q. When you began to drive into New York City did you unload your own truck? A. At the beginning we did.

Q. And was there a time when you no longer unloaded your own truck? A. Yes.

Q. Who did at that time? A. The men of local—I mean the 807 Union in New York.

Q. Do you know their names? A. What do you mean?

Q. Who are they? A. Well, in the New York office?

Q. Yes. A. To take the trucks over?

Q. Yes. A. Horan was one and Deegan; and previous

3791 to them I think was Mitchell.

Q. Would you know Horan and Deegan today if you saw them? A. Yes, I would.

Q. Will you stand up, please, Mr. Agoes, and tell us if you see them in this court room. A. (Standing) I see Horan.

Q. Where is he? A. In the first row here, second from the right.

Mr. Marks: May the clerk call the name of John Horan?

The Court: Yes.

The Clerk: John Horan.

(A man stood up.)

3792 Q. Is that the man that is now standing? A. That is right.

Q. Now do you see Deegan? A. I can't see him.

Q. Take your time. Do you want to step down and look around? A. No. I can't see him. Do I have to look around some more?

Mr. Marks: Well, if your Honor please, may I ask the fourth man from the right in the front row to stand up?

The Court: Well, you have said it now.

The Witness: The fourth one, no—oh, next to him.

(A man stood up.)

Q. Is that he standing now? A. Oh, yes, that is Deegan.

Q. Now, do you remember approximately when Deegan and Horan began to work on your trucks in New York? A. Oh, the latter part of 1936, and I guess it was around September—oh, I started to meet him in September or October—approximately around October, November, December, 1936, something like that; the latter part of that year.

3794

Q. And up to when did you continue to meet them? A. Well, I was not exactly regular or steady, but it was right up until bankruptcy took place.

Q. Do you remember shortly before the bankruptcy hauling certain freight to New Jersey? A. Yes, I did.

Q. Where in New Jersey? A. I don't remember the city, but I do remember the place where we delivered.

Q. Where was that? A. Hyatt Barron.

Q. What type of place is that? A. Oh, they took from us when we delivered to them accessories and roller bearings, and so forth; that is the outside of bearings; we delivered a lot of steel like.

Q. How did you get to Jersey when you made such a delivery? A. I went down across the George Washington Bridge.

3795

Q. Shortly after that did you have a conversation with either Deegan or Horan? A. Well, one special occasion there, I presume it was the next day that I had to make a trip to New York, and in the office that morning somehow they got wind of it——

Mr. Maguire: I move that that be stricken.

The Court: Yes, strike that out.

Q. Did you have a talk with either of them the next day? A. Yes.

Q. Which one? A. Well, it was Jack Horan then.

Q. Now, what did he say and what did you say? A. Well, he found out that we had been across somehow——

Q. He found out what? A. That one of our trucks was over there.

Q. You mean New Jersey? A. Yes.

Q. Yes? A. And, of course, not knowing that I was the one, and I didn't say nothing; so he said it would be too bad for us if he caught us and the result may be that he would cripple us, maybe, or something like that, catching us going across the bridge or making deliveries like that;

3797 and that is all that took place like that.

Q. Do you remember any other conversations with Deegan up to the time of the bankruptcy? A. Well, there was one night there on a Saturday night, I guess, there must have been three of our trucks down, and I happened to be one of them, and two other drivers I don't recall at that time were down, and we were still waiting for the trucks in the afternoon, and they got through unloading kind of early, I imagine; and I should say it was around 5 o'clock that afternoon that—well, they were supposed to get their money from Norwalk, Deegan, Horan, and so forth, and, of course, Deegan would not consent to our going home until they got the money from Norwalk which was due them. So we had to stay there until the money

3798 came down, but it didn't come down, so Deegan kind of got sore——

Mr. Maguire: I move that that be stricken.

The Court: Yes, strike it out.

Q. Just what did he say, Mr. Agoes? A. Well, he had to make a telephone call to Norwalk, and I imagine he made two calls, because he was still waiting for the money.

and it was starting to get around 7 o'clock in the evening or so, and I guess on the second call he was pretty sore about the whole works——

Mr. Maguire: I move that that be stricken.

The Court: Strike it out.

Q. Just tell us what he said. A. Well, he called up, and I guess——

The Court: Don't guess. Just tell us what he said.

The Witness: O.K.

The Court: You are under oath so we don't want 3800
you to testify about guesses.

The Witness: Well, he called up the Norwalk office and he used some violent words because the money was not down, and he insisted that it be sent down immediately; so I don't know who was at the other end, whether it was Mrs. Miner on the telephone or the office man that worked in the office; and, of course, he swore over the telephone at him for not having the money down.

The Court: What time was that?

The Witness: Oh, I would roughly say 7 o'clock or so.

Q. Can you remember any other part of that conversation? 3801
A. Well, that he would not release the trucks until the money came down.

Q. Now, how long after that did the company go into bankruptcy?

The Court: How long after that were the trucks released or did the money come down?

The Witness: Well, that is hard to say. I can't remember exactly, but we did go home, I imagine,

about an hour or so later, but the money come down somehow; I guess he sent the checks down by Western Union, or something like that.

Q. How long after that did the company go into bankruptcy? A. That I couldn't say, Mr. Marks; I don't remember.

Q. You remember what month it was, don't you? A. That they went into bankruptcy?

Q. Yes. A. I think it was in June, 1937.

Q. And how long were you out of a job after that? A. Well, about four or five months.

3803 Mr. Maguire: Objected to as immaterial.

The Court: I will allow it.

Mr. Maguire: Exception.

The Witness: Four or five months.

Mr. Murray: Is that all?

Mr. Marks: That is all.

Cross-examination by Mr. Murray.

Q. I understand you ordinarily in coming to New York left about 5 o'clock in the morning? A. That is right.

Q. And what time did you ordinarily get back at night? A. Oh, about 9 o'clock or so; 9.30.

Q. Then did you start out the next morning again at
3804 5 o'clock? A. Well, if I was on steady, yes.

Q. And would your ordinary hours of work be from 5 in the morning until 9 or 10 o'clock at night and six days a week? A. No, that is not our ordinary hours.

Q. Were they your ordinary hours? A. Not exactly.

Q. Well, what do you mean by "not exactly"? A. Oh, of course, when we worked three hours down and three hours back, and from the time we left the trucks we were supposed to sleep or something.

Q. But on one occasion you got back home at nine or ten at night and then the next morning you started out for New Jersey, didn't you? A. Well, we had to make a trip to New Jersey.

Q. No, I am asking you if you did not, because you have testified here that you had some discussion with Horan about having gone to New Jersey. A. Yes, I had.

Q. Well, did you get up at 5 o'clock that morning after having previously made a trip to New York the day before for the purpose of going to New Jersey? A. Well, you are naming a special morning. What I can't seem to figure out, what do you mean by a special morning?

Q. You went to New Jersey on a trip, didn't you? A. 3806
That is right.

Q. In which you delivered certain merchandise? A. That is right.

Q. Had you made a trip to New York the day before you made the trip to New Jersey? A. Had I made a trip to New York——

The Court: The day before.

A. I wouldn't swear to that.

Q. Do you remember whether or not you did? A. I wouldn't—no, I can't recall that, if I was in New York or not.

Q. Ordinarily how many hours a day in this employment with the Reliable did you work? A. How many hours a 3807
day—I beg your pardon? May I have that question?

Q. Don't you understand the question? I will have the question read. A. No.

The Court: Read the question.

Q. (Read.) A. Ordinarily it was when I was truck driving six hours a day.

Q. When you brought your truck to New York you turned it over to either Hogan, Mitchell or Deegan, is that correct? A. Yes, sir.

Q. Then they made your deliveries, is that correct? A. That is correct.

Q. Ordinarily how many deliveries would be made in New York with your truck after you reached here from Norwalk? A. That I couldn't say.

Q. What kind of merchandise did you generally truck? A. Well, pumps, wall paper from Stamford; it was miscellaneous freight, I would call it.

By the Court.

3809

Q. Well, did you usually deliver all of that freight at one place or did you make deliveries at several places? A. Several places.

Q. After you arrived in the State of New York? A. Well, I didn't make them—the deliveries.

Q. Did you make deliveries at any time? A. Before the union came in?

Q. That is what I am asking you. A. Oh, sure.

Q. Horan and Deegan made the same types of deliveries, didn't they, that you had previously made? A. That is right.

Q. Well now, when you came into New York how long did it take you to make your deliveries after you arrived here? A. Oh——

3810

Q. When you did make them. A. I see. Well, we would be leaving New York approximately——

Q. What time did you arrive in New York? That is what I want to know. A. 8.

Q. 8 in the morning? A. Yes.

Q. How long after that did it require to make the deliveries? A. Approximately 8 or 9 hours.

Q. Did you make any pickups? A. Well, in between—sure, we made pickups in the afternoon.

Q. That is after your deliveries? A. After the deliveries.

Q. How much time did it take to make deliveries and how much time did it take to make the pickups? A. About 5 hours to make deliveries.

Q. About 5 hours to make deliveries? A. Yes.

Q. And how much to make pickups? A. 3 or 4 hours.

Q. Then you started back to Connecticut? A. Yes.

Q. Now, do you remember any instance when you arrived in New York and made your deliveries and your pickups and got back to Connecticut and started out again the next morning? A. No; because we had the day off.

3812

By Mr. Murray.

Q. You always had the day off? A. Every other day we went down.

Q. Well, were there times when you went to Jersey without having a day off? A. When I went to Jersey I was about—see, I wouldn't make all the trips to New York, because I wasn't so regular on the New York run.

Q. Where did you run mostly? A. Well, Stamford and Norwalk once in a while. When it wasn't so bad—I wasn't doing nothing; so I asked him for trips like that.

Q. Did you pick up merchandise in New Haven? A. In New Haven, no.

Q. Bridgeport? A. Yes.

Q. Hartford? A. No.

3813

Q. Did you ever pick up merchandise from Boston? A. Yes, I done the Boston run.

Q. And on the Boston run did you run your truck into New York? A. No, not me; not directly.

Q. Well, if you picked up in Boston and you had merchandise for New York would you deliver it yourself? A. No.

Q. How would that be arranged? A. That would be put on the New York truck.

The Court: At what point?

The Witness: Norwalk, Connecticut.

Q. When did you join Local 443? A. When I started, I imagine, the latter part of 1936; when I started to do the New York run; I can't say exactly.

Q. Well, do you know whether or not it was after December 14, 1936? A. No, I couldn't say whether it was after or before.

Q. Do you know there was a contract between Local 807 and the Reliable? A. At what date?

The Court: Any date.

3815

Q. In December of 1936? A. Yes.

Q. Wasn't it after that contract was signed that you signed with Local 443 in Bridgeport? A. It could be possible.

Q. Well, haven't you got any recollection? A. I haven't; but I could if I went home and got the book.

Q. Yes. Did you have a helper on your truck? A. No.

Q. When you made those runs to New York between December, 1936, and June, 1937? A. No, I didn't.

Q. When you had no helper did you start out from Norwalk at 5 o'clock in the morning? A. About 5, yes.

Q. And you got back to Norwalk about 9.30 or 10 at night? A. I would say about that time.

3816 Q. Did you make all the deliveries yourself without the assistance of a helper?

Mr. Cahill: May we have the time fixed as to that question, your Honor?

The Court: Well, let him answer yes or no.

A. No, not all the deliveries, because we had some heavy machinery and you would have to have the pier men take it off.

Q. What I mean is did you have any helper or assistant from Norwalk to New York even when you carried heavy machinery? A. No.

Q. You testified here that you had a conversation after your trip to New Jersey in which Horan stated in substance to you that it would be too bad if you were caught making deliveries to New Jersey and that you might be crippled or something. Do you recall testifying to that on direct examination? A. Yes.

Q. When did that conversation take place? A. That I can't remember now.

Q. What month of the year? A. That I can't remember.

Q. Was it in 1936? A. No; I would say it was in 1937. 3818

Q. Are you able to tell us about what part of the year 1937 it was? A. About the spring possibly.

Q. Who was present at that conversation that you say you had? A. That I can't remember.

Q. Well, do you remember anyone that was present, of course, excluding yourself? A. I don't remember the name of the head man at the New York office at that time.

Q. Do you remember whom you had the talk with that you told the jury you had? A. Jack Horan.

Q. You say now that it was Jack Horan you had that conversation with? A. Well, he didn't speak to me personally you know. It was just in general; what I mean is I wasn't the only one in the office.

Q. That is, he didn't go up to you and say to you in substance that if he caught you delivering in New Jersey 3819 without consulting Local 807 that something might happen to you? A. Not personally.

Q. Did he mention your name at all? A. No.

Q. Do you know how many other persons were present when that conversation took place? A. Oh, I seen one of the other truck drivers, and at that time there was a spare 807 man in there, and I don't remember his name.

Q. Was that in the Reliable office in New York? A. Yes.

Q. Who was in charge of the office at that time? A. I think now, if I recall, some man by the name of Mr. Moller.

Q. Mr. Moore? A. Moller.

Q. Do you remember whether or not Mr. Moller's residence was in Norwalk? A. It was not.

The Court: The jury may retire. The defendants may leave the room. We will have a recess now.

(Short recess.)

By Mr. Murray.

Q. Is it true now that in that conversation concerning
3821 this Jersey trip that Horan did not address his remarks particularly to you? A. That is right.

Q. In this talk about the failure of the Reliable to pay the wages of the workers on one Saturday evening or afternoon, can you fix the time when that incident took place? A. I cannot.

Q. Was it around March of 1937? A. I would say later than that.

Q. Now, did Horan have a conversation with you on that occasion? A. No, sir.

Q. Did he say to you in substance that "this is not the first time we haven't been paid"? A. Oh, yes, that was said.

Q. Did he say that "After we work all week then we
3822 got to chase our money"? A. Yes.

Q. Did you say to him, "Well, I am in about the same fix. I don't get paid either."? A. That is right.

Q. Did you say, "All I am getting of what I really ought to be paid is $10 or $15 a week"? A. Yes.

Q. You said that to Horan, didn't you? Didn't Horan say that, "If the trucks go back we will never get paid"? A. That I can't remember.

Q. Didn't you say to him, "Well, it is all right with me; I am willing to wait here until you get your money"? A. Yes.

Mr. Murray: That is all.

The Court: Any redirect?

Mr. Marks: No.

(Witness excused.)

JOSEPH BUGLIO, residing at Wheat Road, Vineland, New Jersey, called as a witness on behalf of the Government, being duly sworn, testified as follows: 3824

Direct examination by Mr. Marks.

Q. Mr. Buglio, will you please keep your voice up so that we can all hear what you are saying? What is your business, Mr. Buglio? A. Trucking.

Q. What is the name of the company? A. Buglio Trucking Company.

Q. Are you the owner? A. Yes.

Q. How long have you been in business? A. Well, I have been in business six years and my dad before me 18 years.

Q. Between what points did you haul merchandise? A. Principally from South Jersey to New York and 3825
Philadelphia; occasionally into the New England States.

Q. What type of commodity do you haul? A. Principally canned goods and produce.

Q. Did you haul mostly to any particular consignees in New York City? A. Why, our biggest receiver in New York is Francis H. Leggett & Company.

Q. Can you tell us whether or not most of your loads to New York are so-called solid or miscellaneous? A. It is most carloads, solid loads.

Q. That is, the entire merchandise goes to one consignee? A. Yes.

Q. Was that true in 1937? A. Yes.

Q. Do you know about how long it takes to unload such a truckload of merchandise? A. Not over an hour; some loads 45 minutes.

Q. Now, in the early part of 1937 about how many trucks a day did you send into the City? A. Why, we run anywhere from one to five trucks.

The Court: A day, you mean?

The Witness: A day.

3827 Q. Can you tell us whether all or any of those trucks had helpers on them in addition to the drivers? A. Why, we sent the first truck; that had a helper, and the second one wouldn't, and the third one, and so on.

Q. Now, did the drivers and the helpers unload themselves? A. Yes.

Q. During that period? A. Yes.

Q. About how long did the trip to New York City take from Vineland? A. Why, it is about a 4-hour run.

Q. Did there come a time when your own drivers and helpers no longer unloaded the trucks in New York City? A. Why, since we had to put a New York man on, the driver had to help him and he did most of the work.

3828 Mr. Murray: May I have the answer stricken out?

The Court: Strike it out. Repeat the question.

Q. (Read.)

The Court: Yes or no.

A. Why, no.

Q. I don't know if you understood. Do your own drivers and helpers unload now?

Mr. Murray: I object, if your Honor please.

The Court: I will sustain the objection, because "now" I take it means during this trial.

Mr. Marks: At the present time.

The Court: Well, we are not concerned about that. Did there come a time when anyone other than your driver or your helper unloaded or assisted in unloading trucks?

The Witness: Did there come a time when they unloaded or assisted? 3830

The Court: Did there come a time when anyone other than your driver or helper either unloaded or assisted in unloading your trucks? You can answer that yes or no.

The Witness: To a certain extent, yes.

Q. When was that time? A. When we hired men here in New York.

Mr. Murray: I move to strike it out.

The Court: Strike it out. We don't know when you hired men here in New York.

The Witness: 1937.

The Court: What month in 1937?

The Witness: About the 1st of March. 3831

Q. At that time, the 1st of March, 1937, can you tell us whether or not your own drivers and helpers were members of any labor union? A. Yes. They were members of 590 at Vineland, American Federation of Labor.

Q. Is that the International Brotherhood of Teamsters? A. Yes.

Q. Were all of them members of that union? A. Yes.

Q. Now, in the early part of March, 1937, did you receive any telephone calls from New York City? A. Yes; we received calls from the drivers.

The Court: Strike out after "Yes."

Q. After receiving those calls did you make any payments or send any money to New York City? A. Yes, I did.

Mr. Murray: I object.
The Court: Yes or no.
The Witness: Yes.

3833 Q. Shortly after that did you make a trip to New York City yourself? A. Yes.

Q. Approximately when? A. Why, I should think the first part of March.

Q. 1937? A. 1937.

Q. Whom did you see in New York City? A. I met some men who told me they were members of——

Mr. Maguire: I move that that be stricken out.
The Court: Strike it out.

Q. Do you know whom you saw?

The Court: Do you know whom you saw?

The Witness: The first men I saw in New York
3834 was James Martin and a fellow by the name of Randazzo, and I think it was Dillon.

Q. Would you know any of these men if you saw them? A. I think I would.

Q. Will you stand up and tell us if you see any of those three men in court? A. I think Randazzo is in there (indicating).

Q. Which one? A. The fellow with the curly hair in the center.

Q. Which row? A. The first.

Q. Which seat from the left end? A. The left end? Fifth. That is, counting the man on the end. The fourth in the chair.

Q. The fourth chair from the left? A. Yes.

Mr. Marks: May the clerk call the name of Bernard Randazzo?

The Clerk: Bernard L. Randazzo.

(A man stood.)

The Court: Does the man who has arisen answer the description of the person you saw at that time? 3836

The Witness: Yes.

The Court: And you now so identify him?

The Witness: Yes.

Q. Do you see either of the other two? A. Some of the faces look familiar. It has been three years.

Q. Well, do you see either Martin or Dillon there? A. No, I don't see Martin. No, I don't think I could pick out Dillon in there.

Q. How long is it since you have seen Dillon? A. About three years.

Q. Where did you meet these three men? A. On West Street.

The Court: Were they together? 3837

The Witness: Yes.

Mr. Maguire: May I interrupt, if the Court please?

The Court: Yes.

Mr. Maguire: Mr. Macomber, one of the defendants, the man who has been ill: I have just been handed a note that he is feeling weak and would like to ask permission to withdraw for a minute.

The Court: Well, we will take a recess and he may retire. Ask the marshal to communicate with Room 115 to see if the nurse is there.

The Court: Proceed, Mr. Marks.

By Mr. Marks.

Q. Were Martin, Randazzo and Dillon together when you saw them? A. Yes.

Q. Did you have a conversation with them on West Street? A. Yes, we talked.

Q. What was the conversation? A. About what we would have to do in New York from then on.

3839 Q. Well, please tell us who spoke first, as well as you can remember it, who replied, what was said then, and so forth and so on. A. Well, it is a hard matter to say who spoke first, but we conversed with the three of them, and they told me I would have to hire a man in New York to unload our trucks.

Q. What did you say? A. I told him I didn't see why we should. Our men belonged to the union, the same Federation of Labor, and there wasn't much said. They just told us what we had to do and that was all we had to do.

Q. What did you say? A. Well, I disagreed with them but could not do much about it.

Q. Now, tell us the whole conversation, Mr. Buglio.

3840 A. I told him, "I don't see why we should hire an extra man and pay him a full day's pay when some days we only use him for 15 minutes, an hour or two hours"; and I told them I did not see where it was justified, interfering with interstate traffic, interstate commerce—and well I guess that was about all.

Q. What did he say to that? A. Well, they did not seem to know much about interstate commerce.

Q. No, what did they say about it? A. Well, they said, "That is the rules of the union. That is what you will have to do."

Q. And do you remember any further part of that conversation? A. Well, there wasn't much after that.

Q. Did you go anywhere with the men? A. Well, they took me up to the union room and one of the union officials explained to me——

Q. Just a second. Do you remember where the union hall is? A. On Varick Street.

Q. And did you go up there with all three of the men you met on the street? A. Yes.

Q. Did you meet anybody in the union hall? A. Well, 3842
there was a couple of men in there. I don't quite recall whether it was Mr. Brennan or Hickey—they said they were officials of 807.

Q. Well, do you remember whom you met? A. I could not say whether it was Hickey or Brennan or Campbell.

Q. Beg pardon? A. It might have been Campbell, Willie Campbell.

Q. Now, do you know who it was that first time? A. Well, I could not say to be exact who it was. One of those three men.

Q. Will you stand up and tell us if there is anybody here in the court room that you did meet in the union hall on that first visit. A. (Standing) I don't think so.

Q. Do you know Campbell? A. Yes.

Q. Do you see him here? A. I have talked with him 3843
several times.

Q. Do you see him here? A. I don't recognize him.

Mr. Marks: May I have this marked for identification?

The Court: Yes.

(Marked Government's Exhibit 39 for identification.)

Q. Will you look at Government's Exhibit 39 for Identification and just tell us whether that calls to your mind anyone that you know? A. That is Willie Campbell.

Q. Now do you see him in this court room? A. How far back do they go?

Q. Well, just stand up and look around and just tell us if you see him here. A. I don't know whether that is him in back there or not; there is a fellow in back there; I can't see his face.

Q. Which row?

The Court: You can step down if you want to to get a better view of anyone.

3845

Q. If you can't see his face, step down and walk closer. A. It looks like him back there.

Q. Which row? A. Against the wall in the back row. Fourth one from the end.

Mr. Marks: Will your Honor have the fourth man from the end in the back row stand up?

The Court: He may do so if he wishes.

(A man stood up.)

Q. Is that the man that is standing? A. No, I don't think that is he.

Q. Do you see him here? A. No, I can't see him.

3846 Q. Well, will you step down and go closer, Mr. Buglio? A. I can't pick him out of the crowd. After I have talked to him several times, still I can't place him.

Q. Now, do you remember who you spoke to at the union hall on that first occasion?

Mr. Murray: I object on the ground that this has already been answered, if your Honor please.

The Court: Sustained.

Q. I believe you told us you spoke to one of three men, is that it? A. Yes.

Q. Do you remember now which one of the three it was?

Mr. Murray: I object, if your Honor please.

The Court: I will allow him to state if he knows of his own knowledge.

A. I talked with more than one.

Q. On this first visit? A. On this first visit.

Q. Well, can you tell us with whom you talked? A. No, I can't say definitely. It has been three years.

3848

Mr. Marks: May I have this marked, please, the second sheet?

The Court: Yes.

(Marked Government's Exhibit 40 for Identification.)

Q. Would you look at Government's Exhibit 40 for identification, page 2, and I direct your attention to this part of it and ask you if that refreshes your——

The Court: Just a moment. What is marked for identification, page 2?

Mr. Marks: The back of page 2, your Honor.

3849

Q. (Continuing) And I will ask you if that refreshes your recollection as to the identity of the person you spoke to in the union hall on that first visit. A. Oh, it was Campbell——

By the Court.

Q. No, the question is whether your recollection is refreshed. A. Yes.

Q. By looking at the paper shown to you by the assistant United States attorney? A. Yes.

By Mr. Marks.

Q. Can you tell us now who it is that you talked to there on that occasion? A. Campbell.

Q. Now who else was present? A. Mr. Hickey or Mr. Brennan.

Q. Anyone else? Did you say Hickey and Brennan or Hickey or Brennan? A. Hickey or Brennan.

Q. Anyone else? A. I think Clarke was there; a delegate by the name of Clarke.

3851 Q. Did you go up there with anyone? A. I went up there with Martin, Randazzo and Dillon.

Q. And were those three present? A. Yes.

Q. Now, tell us, if you will, the conversation that you had there on that occasion? A. Well, I asked him why we had to hire extra help in New York, and they went on to explain to me——

The Court: No, what did they say?

A. (Continued) That they passed a ruling that any truck over 40 miles outside of New York had to have another man on, what they called a City man, and we had to pay him at the rate of $56.52 a week or $9.42 a day, and

3852 his duties was to unload the truck.

Q. What did you say? A. I told them I didn't see why we needed an extra man; that our men were capable of unloading. And they said, "We can't help that; it is the new rules of the union; we have got to put all these men to work." And I went on to tell him that it was against—that I didn't see where it was right in interfering with interstate traffic.

Q. What did they say to that? A. They said, "We can't help that; you have just got to put them on or you don't come into New York."

Q. What else was said? A. Well, I told them that we could not come into New York and we could not go out of business—there wasn't anything else said. We would have to put them on.

Q. Well, was anything said about going out of business? A. Well, I told them that we could not afford it; that the freight we were hauling was all carload business and didn't carry a very high rate. So they said, "Well, if you can't afford to do it you can get out of business."

Q. Who said that? A. I think it was Campbell. 3854

Q. What did you say to that? A. I said I didn't see why we should go out of business after we built up a trucking business and worked at it for 20 years. They said, "We can't help that. You pay it or else you don't come into New York. In other words, you pay it or get out."

Q. Now, do you remember any other part of that conversation? A. No, I guess that was all there was to it.

Q. Did you sign anything on that occasion? A. No.

Q. Was there anything said about signing anything? A. They said we would have to sign a contract, and I asked them to give me another week's time; I would go back and think it over and find out if we really had to hire them; and a week later I come back and met the same men

Q. Just a moment. In the intervening week did you send any money to New York City? A. Yes, we send 3855 money by Postal Telegraph to everybody who worked on the trucks.

Q. And approximtaely a week after this visit you again came to New York? A. Yes.

Q. Now, whom did you meet when you came to the City? A. I met the same—Martin, and we went up to the union room.

Q. Martin alone? A. No, Martin and Dillon, I will say.

Q. Anyone else? A. No, I don't think anyone else on that trip.

Q. Whom did you see in the union room? A. Clarke was up there.

Q. Did you have a conversation there that time? A. Yes, and I think Brennan was up there too.

Q. What was the conversation? A. Well, practically on the same lines; that I didn't like to sign a contract, and they told us we would have to sign a contract or we could not operate in New York.

Mr. Marks: May I have this marked?

3857 The Court: Yes.

(Marked Government's Exhibit 41 for Identification.)

Q. I show you Government's Exhibit 41 for Identification and ask you if that is your signature on it? A. Yes.

Q. Where and when did you sign that paper? A. Up in the union room on Varick Street.

Q. Is that on the occasion of the visit that you have just been telling us about? A. Yes, the second visit.

Mr. Marks: I offer it in evidence.

The Court: Show it to counsel.

(Paper handed to Mr. Murray.)

3858 (Government's Exhibit 41 for Identification received in evidence.)

The Court: What is the date of it?

Mr. Marks: March 16, 1937.

(Mr. Marks read Government's Exhibit 41 to the jury.)

Q. Now, Mr. Buglio, have you told us the entire conversation at the union hall at about the time this paper

was signed? A. Why, I just protested to sign it, and they went on and explained the same thing, that we would have to sign it in order to operate to New York.

Q. Is that all you can remember? A. That is about all there was to it.

Q. Who went to work for you after that? A. Martin.

Q. Can you recollect now any further conversation at the time the contract was signed? A. No, it was just a question of who was going to work——

Q. What was said on that subject? A. There was two of them there and——

Q. When you say "two" who do you mean? A. Randazzo and Martin. I think it was Clarke had asked who 3860
was going to work for us and they both seemed to want to go to work. We only needed one as the first man; and so they drew straws as to who would get the job.

Q. Did you see them do it? A. Yes.

Q. And who won out? A. Martin.

Q. Was there any conversation about hiring the men? A. Well, we don't have much choice in hiring men—that is, whoever makes——

Mr. Maguire: No, I move to strike it out.

The Court: Strike that out.

You were asked about a conversation, not about your choice.

Q. What was said about that? A. Well, after he, Mar- 3861
tin, was the one who was picked to work for me, I told him where to meet the trucks every morning.

Q. Well, before he was picked to work for you, did you say anything on that subject? A. Well, I asked him if we could hire our own men.

Q. Whom did you ask that of? A. I asked Clarke that.

Q. What did he say? A. He said, "You have got a man hired already." He said, "Usually the man who makes the job is the one that gets it."

Q. Do you remember anything else that was said? A. No.

Mr. Marks: May I have this marked for identification, the back of page 5?

The Court: Yes.

(Marked Government's Exhibit 42 for Identification.)

The Court: You are putting the identification number on the back of the page, but I suppose it is the whole page itself that you want marked?

Mr. Marks: Yes, sir.

3863

Q. I direct your attention to Government's Exhibit 42 for Identification and ask you if that refreshes your recollection as to any further part of that conversation in the union hall. A. Yes.

Q. Now can you tell us anything else that was said there? A. I asked him if we could enter some of our own men in 807, transfer them from 590 to 807, and they said no because they had enough men of their own that they wanted—that would have to go to work.

Q. Did you ask him anything else that you have not told us about yet? A. I said, "If I put your men on, what am I going to do with my men?" He said, "You can lay your men off."

3864 Q. Is there anything else now, Mr. Buglio, that you haven't told us about? A. Nothing else at that one meeting; I mean that one time I was up there.

Q. Will you look at that same exhibit and see if it refreshes your recollection any further. A. Well, at a later date, yes.

Q. At a later date with whom did you have a conversation? A. I conversed with Campbell.

Q. Do you remember when? A. No, I couldn't say.

Q. Approximately? A. It was at different times.

Q. Well, about what year? A. Maybe a year later.

Q. Now can you fix that date with any more certainty? A. Well, I think it was the last part of the winter, or a year later we had trouble again; they would not let one man unload more than two trucks whether he finished at 9 o'clock——

Mr. Murray: I move to strike out the answer as far as it has gone, if your Honor please.

The Court: Strike it out.

Tell us what conversation you had.

3866

Q. Well, do you remember a specific conversation in the early part of 1938 about unloading your trucks? A. Yes, we had trouble.

Q. No, just——

The Court: What did you say?

Q. With whom? A. I asked him why one man would not work the full eight hours.

Q. With whom did you have this conversation? A. I think that was with Furey.

Q. Now, do you know Furey? A. I only saw him once.

Q. When was that? A. That was in 1938.

Q. Would you recognize him if you saw him now? A. I don't know as I would. They all look different sitting there than they did on the street. 3867

Q. Is there any particular physical characteristic that you remember about Furey? A. I know he has only got one eye; I know that.

Q. Well, do you see him here in this court room? Stand up and look around. A. (Standing) (No answer.)

Q. Will you step down, Mr. Buglio, and walk over closer. A. (Leaving stand) The fellow in the light-green suit there and the red tie, I think.

Q. Sitting in which row? A. Second row.
Q. Which seat? A. First seat.

Mr. Marks: May the clerk call the name of Austin Furey?

The Court: Yes.

The Clerk: Austin Furey.

(A man stood up.)

Q. Is that the man that has just stood up? A. Yes.
Q. You may go back to the stand, please. A. (Witness returns to stand.)
Q. What was this conversation with Furey now?

3869

Mr. Murray: May I have the time fixed, if your Honor please?

Mr. Marks: I believe the witness said it was the early part of 1938.

The Court: He said it was about a year later than the conversation he had when he signed the contract, as I recall it.

The Witness: Yes.

By the Court.

Q. Can you fix the time any more definitely than that? A. Well, it was late winter.
Q. Does Exhibit 42 for Identification enable you to fix the time? A. No, I don't think so.

3870

Q. Is there anything here that refreshes your recollection?

Mr. Marks: I think I may have something, your Honor.

The Court: All right.

Mr. Marks: May I have this marked for identification?

The Court: Yes.

(Marked Government's Exhibit 43 for Identification.)

By Mr. Marks.

Q. Will you look at this paper, Government's Exhibit 43 for Identification and tell us if that refreshes your memory as to the time you had this conversation with Furey. A. Yes, it does; that it is when I started the complaint——

Mr. Murray: If your Honor please, I move to strike it out.

The Court: Strike out after "Yes." 3872

Q. Approximately when did you have this conversation? A. About January.

Q. Beg pardon? A. January.

Q. Of 1938? A. 1938.

Q. And do you remember where the conversation was? A. The first was over the telephone, and then I met him at 22nd Street and Hudson River.

Q. What was the conversation over the telephone? A. About putting a——

Q. Tell us the conversation, Mr. Buglio. A. Well, just how it happened, we had two trucks load to New York——

Mr. Murray: I move to strike it out as not responsive. 3873

Q. Is this what you said to Furey? A. Well, I said to Furey——

The Court: Strike out the previous answer.

A. (Continued) "I don't see why we should hire another man after the one man unloaded two trucks and he was done at 10 o'clock, and there was another man in there

with about a ton and a half of freight, and the driver called me that we had to put another man to unload that ton and a half of freight, about 15 minutes' work."

The Court: Is that what you told Furey?

The Witness: Yes.

So I told Furey that I did not see where it was justified to put another man for 15 minutes' work when it was only ten o'clock in the morning and the first man had completed his day, only had started at eight o'clock. And we argued that over the telephone.

3875 Q. What did he say? A. He said it was the rules of the union; we would have to do it or send the truck back to Jersey.

Q. What did you say? A. I told them they need that freight; we would just have to pay $9.42 more and let him unload it. We could not take that freight back to Jersey.

Q. Do you remember whether anything else was said? A. I told him we were going to make complaints to the Interstate Commerce Commission or the Federal authorities; and he said, "Go ahead."

Q. What else did he say? A. That was all.

Mr. Marks: May I have this marked for identification?

3876

The Court: Yes.

(Marked Government's Exhibit 44 for Identification.)

Q. I show you Government's Exhibit 44 for Identification and ask you to look at that, Mr. Buglio. Can you tell us by referring to that exhibit the names of some of the

men to whom you paid money in 1937 for unloading your trucks?

Mr. Murray: I object, if your Honor please, on the ground that there has been no basis laid for it.

The Court: Sustained.

Q. Do you know the names of any persons to whom you made payments for unloading your trucks? A. Yes, I made payments to Martin, Randazzo; several others. I can't say offhand.

Q. Is there anything you can refer to to refresh your memory as to these other names? A. There is a list of that here come out of the office, our office—— 3878

Mr. Murray: I move to strike out the answer, if your Honor please.

The Court: I will allow it to stand.

Q. Can you now tell us any other names? A. There is Carl Jesse and Peter Waskiewicz.

Q. Will you spell that? A. W-a-s-k-i-e-w-i-c-z. J. Sharkey and William Wideman——

Mr. Murray: If your Honor please, I object to the witness reading those names on the ground that there has been no basis laid for refreshing his recollection—— 3879

The Court: Well, the question was whether he knew of any persons to whom he paid money, and he said he paid it to three persons whom he designated by name and said there were others. Then he said he had a memorandum there that came out of the office. Now, I assume he says that that memorandum refreshes his recollection, and I assume that he is testifying from that memorandum that these are people to whom he paid money.

Mr. Murray: Your Honor, the basis of my objection was because it does not appear that this memorandum refreshes his recollection and it does not appear that this memorandum was kept in the ordinary course of business.

The Court: Let us find out.

By the Court.

Q. Did you have an independent recollection of the names of these persons to whom money was paid at the time of such payment? A. Money was paid out of the office——

3881 Q. No, I am asking you if you have an independent recollection as to the persons to whom money was paid? A. Yes.

Q. At the time that the payments were made? A. Yes, to an extent.

Q. You do not now remember all the names of those persons? A. No, I don't.

Q. Does this memoranda that you have before you refresh your previous recollection? A. Yes.

Q. As to who those names, or as to who those persons were? A. Yes.

The Court: You may testify.

What was the last part of his answer so he may know where he was interrupted?

3882 (Last portion of answer read.)

By Mr. Marks.

Q. Are there any others that you can remember now? A. No.

Q. Do you know personally all of the persons to whom you paid money? A. No.

Mr. Marks: That is all.

The Court: Cross-examine.

Cross-examination by Mr. Murray.

Q. You say that you had a telephone conversation with Furey? A. Yes.

Q. And that was in January of 1938, was it? A. Yes.

Q. Had you ever met Mr. Furey before that? A. I met him afterwards.

Q. How many times after the telephone conversation did you meet him? A. Why, once.

Q. Of course you don't know whether or not it was Furey's voice, do you? A. Well, the tone of voice he used over the telephone, I could almost distinguish it anywhere.

Q. But you had not met him at that time, had you? A. 3884
Not that I recall.

Q. Are you able to positively say that it was Furey's voice that you heard over the telephone? A. Yes, because our driver would say, "Mr. Furey wants to talk to you, the delegate." He always identified himself to the driver first and then they would make the call.

Q. Well, did you assume it was Furey because your driver said it was Furey? A. Well, I assumed that it was.

Q. Is that the reason you say it was Furey who was talking to you in January— A. Well, I met him afterwards.

Q. Well, I ask you again, were you able to recognize Furey's voice as being that of Furey in this telephone conversation? A. I think I could at that time I talked to him.

Q. Are you sure? A. I am most certain I could at the 3885
time.

Q. Now, Martin went to work for you when? A. March, 1937.

Q. He is still working for you, is he? A. Yes.

Q. Will you look around among those men that are seated over there on your right, and see if Martin is among them. A. (Standing) I don't think he is here.

The Court: Did I understand you to say that Martin was in your employ now?

The Witness: Yes, he is still on the payroll; still paying him.

Q. How often did Randazzo work for you?

The Court: Strike out after "Yes."

A. How often did Randazzo work for me?

Q. Yes. A. I should say it was not over two or three days.

Q. As a matter of fact, he only worked for you part of
3887 a morning, didn't he? A. Well, I just couldn't say how long he worked. It was over two years ago.

Q. Well, did you first meet Randazzo the first day that you came to New York to discuss the signing of a contract in the union room? A. Yes.

Q. And was Randazzo on your truck on that day? A. I can't recall whether it was that one particular day.

Q. Well, do you know how often Dillon worked on your truck? A. Dillon I think worked only one day for us.

Q. And do you know how long any of the other men whose names you mentioned here worked on the truck for you? A. Outside of Martin, they worked only two, three, four days, any of them.

Q. In a space within two years, is that right? A. Yes.

Q. And the longest any of those, outside of Martin,
3888 worked for you was two or three days, is that correct? A. Well, it might have been five or six days.

Q. Now, when you came to New York on that day and discussed the signing of a contract with Local 807, you took the contract back to Vineland, didn't you, with you? A. I took the first——

Q. A copy of it? A. I took a copy of it, yes.

Q. And then did you talk to the delegate of the local in Vineland? A. No, I don't think I ever brought it up with him.

Q. Now, did you before you signed the contract make arrangements for the delegate from Vineland to go over to Local 807 in New York to discuss the matter of the contract? A. No, I never had.

Q. Did anyone connected with your concern that you knew of? A. Our association has.

Q. What was the name of the association? A. It was the South Jersey Motor Truck Carriers Association.

Q. Well, did you know the delegate from the local from Vineland? A. Yes.

Q. Do you know what his name was? A. Patrick Trotter.

Q. Now, before you signed the contract with Local 807 and within that week that you first say that you talked 3890
to Local 807, did you talk to Trotter or the other member of your local in Vineland concerning the signing of this contract? A. Personally I did not.

Q. Did you have any communication from them? A. No, the only ones who handled it was our association, the attorney for our association.

Q. Then after a week's interval did you return to New York and sign the contract? A. One week, yes.

Q. In a week? A. Yes.

Q. Now, Martin who worked for you was in the habit of handling four trucks a day at Leggett's warehouse, didn't he? A. No, I don't think he has.

Q. Well, will you say that he was not in the habit of doing that? A. No, unless it was when we first signed 3891
the contract.

Q. How large a truck was the largest truck that you used in your business between Vineland and New York? A. Well, we used a semi-trailer truck.

Q. Well, did you have trucks and trailers that were 32 feet in length? A. No.

Q. What was the greatest length of any trailer that you employed? A. We only had—they are from 18 to 26 feet; one there we haul empty containers, 30 foot long.

Q. Did any of those trailers cart from 1500 to 3000 cartons? A. Empty cartons, yes.

Q. Now, on the first day that you say that you entered the headquarters of Local 807, are you certain whom you talked to that day? A. Yes.

Q. Are you certain that it was Campbell that you talked to? A. Well, there was more than one in the office the day I was in there, the first time I went in. Hickey, Brennan and Campbell.

Q. Well, where did you get their names? A. I was introduced to them by men off the street.

Q. As Hickey, Brennan and Campbell? A. Mister.

3893 Q. Beg pardon? A. Well, Mr. Hickey, Mr. Brennan and Mr. Campbell.

Q. Well, whether it was mister or not, those were the names of the three men that were introduced to you? A. Yes.

Q. Well, did you know what position Hickey occupied with the union at that time? A. No, I did not.

Q. Or Brennan? A. No, I did not.

Q. Or Campbell? A. Campbell I knew was a delegate. I was told that.

Q. Did you find that out the first time that day? A. Yes, I found that.

Q. How many times all told between the time you signed this contract up to June 1, 1938, have you ever talked to Campbell concerning any of your trucking transactions?

3894 A. From June, 1938?

Q. From the time you signed the contract up to, say, June 1, 1938. A. About twice.

Q. Now, was the first occasion when you held this discussion that you talked about the union rules? A. Yes, I talked to him about the union rules and what they thought we had to do.

Q. When was the second time that you talked to Campbell? A. I imagine it was on the street some time later.

Q. Do you remember when it was? A. No, I don't remember dates offhand.

Q. Do you know what year it was? A. The same year.

Q. Do you remember what conversation you had? Do you know what the conversation was at that time? A. The same thing, the same conversation, that I didn't like the idea and they insisted what had to be done; it was the same conversation every time.

Q. Do you remember any of that conversation? A. Well, it is the same thing, that I couldn't see why we had to do it, and all he did was to explain to me that it was the rule of the union and we had to do it.

Q. Now, you testified that you talked to Furey on the 3896
telephone on one occasion and that you saw him on a second occasion; is that your testimony? A. Yes.

Q. Can you fix the date of the second occasion when you say you saw him? A. No, I can't remember.

Q. Do you know where it was? A. I saw him at 22nd Street and Hudson River.

Q. Well, is there anything particular at 22nd Street and Hudson River in the way of churches or anything? A. That is where I tried to stop every morning.

Q. Have you got a New York terminal? A. Yes, sir, just a telephone place on 513 Greenwich Street.

Q. That isn't at 22nd Street, is it? A. No, but we only use that for a couple of accounts that call there, probably once a month, and the call is relayed on to our office, and 3897
we had a little re-shipping.

Q. How many trucks did you employ up to June 1, 1938, to, say, September? A. About 14.

Q. Now, you testified here that your drivers are all members of the local union over in Jersey, South Jersey? A. Yes.

Q. Were they members of that union in December, 1936? A. Yes, they have been members of that union since 1933, when it was organized.

Q. Do you know the name of the president of that union? A. Patrick Trotter.

Q. Is he still president? A. Yes.

Q. Do you know where their headquarters are? A. Landis Avenue, Vineland.

Q. In May of 1938 how many drivers were you employing? A. May, 1938?

Q. Yes. A. Well, it varies anywhere from 10 to 20.

Q. On this second occasion that you say you talked to Furey, did he say anything about the contract that you had signed with Local 807? A. Yes, he reminded me we had a contract signed.

3899 Q. Did you have a copy of the contract when you were holding that conversation with Furey? A. I had a copy of the first contract I signed, yes.

Q. Well, did he tell you if there was a controversy or dispute that your contract entitled you to arbitration? A. Yes. That is a clause in the contract.

Q. Well, did he tell you if there were any differences that you had a right to have an arbitrator appointed? A. Yes, we have a right to an arbitrator.

Q. Did he tell you that any disputes or differences could be submitted to an arbitrator? A. Any differences with the men?

Q. Yes. A. Yes.

Q. Did he tell you if you were dissatisfied that you could have a voice in choosing the arbitrator in submitting any

3900 differences to him? A. No, he never said that.

Q. Did he tell you at that time that you say he had this conversation that you did have a right to submit any differences to an arbitrator? A. Any differences that might arise with the men, yes.

Q. Yes. A. Any trouble we had with the men.

Mr. Murray: That is all.

The Court: Redirect?

Mr. Ennis: No redirect.

(Witness excused.)

The Court: Next witness.